

MONTANA LEGISLATIVE HISTORY

Chapter 511 19 97

Bill H 83 S _____ Original bill & history ✓ C

H. Committee on Corrections Select

S. Committee on Finance & Claims

Hearing Date(s) Feb 20 ✓ C

Hearing Date(s) Mar 21 ✓ C

Mar 10 ✓ C

_____ C

_____ C

_____ C

_____ C

_____ C

Date Out _____ C

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

Free Conference Comm.

Apr 16

1997 LEGISLATIVE HISTORY

The 1997 Montana Legislature has dramatically changed the nature of the legislative minutes. Specifically, the minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are somewhat fuller in content. Exhibits available from the State Law Library (which may include written statements, attendant information, roll call votes, roll call attendance, a list of public members present, specific action taken on legislative bills, etc.) are included with this request. For information on other exhibits, contact the Montana Historical Society Archives at 444-4774. Exhibits may also be purchased on a CD-ROM from the Montana Legislative Council (444-3064).

Just as in the 1995 legislative session, the House and Senate hearings were recorded. The Historical Society is the depository for the tapes. For information on accessing the tapes, call the archives at 444-4774.

If you have concerns over the format of the 1997 legislative minutes, it is suggested that you contact your state legislators.

	TRANSMITTED TO SENATE		
1/17	FIRST READING		
1/17	REFERRED TO NATURAL RESOURCES		
1/22	HEARING		
2/01	COMMITTEE REPORT—BILL CONCURRED		
2/15	2ND READING CONCURRED	50	0
2/17	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE		
2/19	SIGNED BY SPEAKER		
2/20	SIGNED BY PRESIDENT		
2/21	TRANSMITTED TO GOVERNOR		
2/24	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 34		
	EFFECTIVE DATE: 02/24/97		

HB 82 INTRODUCED BY HIBBARD *LC0212 DRAFTER: PETESCH*

REVISE THE LAWS GOVERNING CORPORATE TAXES
BY REQUEST OF DEPARTMENT OF REVENUE

12/23	INTRODUCED		
12/27	FISCAL NOTE REQUESTED		
1/06	FISCAL NOTE RECEIVED		
1/06	FIRST READING		
1/06	REFERRED TO TAXATION		
1/09	FISCAL NOTE PRINTED		
1/14	HEARING		
1/23	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/25	2ND READING PASSED	85	13
1/27	3RD READING PASSED	78	19
	TRANSMITTED TO SENATE		
1/28	FIRST READING		
1/28	REFERRED TO TAXATION		
2/06	HEARING		
2/07	COMMITTEE REPORT—BILL CONCURRED		
2/25	2ND READING CONCURRED	50	0
2/26	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE		
3/06	SIGNED BY SPEAKER		
3/07	SIGNED BY PRESIDENT		
3/10	TRANSMITTED TO GOVERNOR		
3/13	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 51		
	EFFECTIVE DATE: 03/13/97		

HB 83 INTRODUCED BY BERGSAGEL *LC0419 DRAFTER: MACMASTER*

ALLOW AND PROVIDE FOR THE REGULATION OF PRIVATE CORRECTIONAL
FACILITIES

BY REQUEST OF DEPARTMENT OF CORRECTIONS

12/23	INTRODUCED		
12/27	FISCAL NOTE REQUESTED		
1/06	FIRST READING		
1/07	REFERRED TO CORRECTIONS SELECT COMMITTEE		
1/09	FISCAL NOTE RECEIVED		
1/15	FISCAL NOTE PRINTED		
2/20	HEARING		
3/11	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/13	2ND READING PASSED AS AMENDED	81	17
3/15	3RD READING PASSED	76	22

	TRANSMITTED TO SENATE		
3/18	FIRST READING		
3/18	REFERRED TO FINANCE & CLAIMS		
3/21	HEARING		
3/22	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/28	2ND READING CONCURRED AS AMENDED	38	8
4/02	3RD READING CONCURRED	43	6
	RETURNED TO HOUSE WITH AMENDMENTS		
4/12	2ND READING AMENDMENTS NOT CONCURRED	94	0
4/12	FREE CONFERENCE COMMITTEE APPOINTED		
4/16	HEARING		
4/17	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/18	2ND READING FREE CONFERENCE COMMITTEE		
	REPORT NO. 1 ADOPTED	72	27
4/19	3RD READING FREE CONFERENCE COMMITTEE		
	REPORT NO. 1 ADOPTED	66	29
	SENATE		
4/14	FREE CONFERENCE COMMITTEE APPOINTED		
4/17	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/18	2ND READING FREE CONFERENCE COMMITTEE		
	REPORT NO. 1 ADOPTED	48	0
4/19	3RD READING FREE CONFERENCE COMMITTEE		
	REPORT NO. 1 ADOPTED	43	6
4/22	SIGNED BY SPEAKER		
4/25	SIGNED BY PRESIDENT		
4/25	TRANSMITTED TO GOVERNOR		
5/02	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 511		
	EFFECTIVE DATE: 05/02/97		

HB 84 INTRODUCED BY KITZENBERG *LC0556 DRAFTER: KURTZ*

APPROPRIATE \$45,000 FROM THE ACCOMMODATION TAX SPECIAL
REVENUE FUND FOR ESTABLISHMENT OF THE FORT
PECK-NORTHEASTERN MONTANA INTERPRETIVE CENTER

12/23	INTRODUCED
1/06	FIRST READING
1/06	REFERRED TO APPROPRIATIONS
1/10	FISCAL NOTE REQUESTED
1/14	HEARING
1/14	FISCAL NOTE RECEIVED
1/18	FISCAL NOTE PRINTED
1/20	REVISED FISCAL NOTE REQUESTED
1/24	REVISED FISCAL NOTE RECEIVED
1/28	REVISED FISCAL NOTE PRINTED
2/10	TABLED IN COMMITTEE
3/28	MISSED DEADLINE FOR 67TH DAY TRANSMITTAL
	DIED IN COMMITTEE

HB 85 INTRODUCED BY HARPER *LC0713 DRAFTER: HEFFELFINGER*

SPECIFY THAT THE COMMISSIONER OF POLITICAL PRACTICES SHALL
NOTIFY THE SECRETARY OF STATE OR THE ELECTION
ADMINISTRATOR OF NONCOMPLIANCE WITH CAMPAIGN PRACTICE
LAWS BEFORE CERTAIN DEADLINES RELATED TO BALLOT
CERTIFICATION

BY REQUEST OF SECRETARY OF STATE

12/23	INTRODUCED
12/26	FISCAL NOTE REQUESTED
1/06	FIRST READING

HOUSE BILL NO. 83
INTRODUCED BY BERGSAGEL
BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING AND PROVIDING FOR THE REGULATION OF
PRIVATE CORRECTIONAL FACILITIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill to provide guidance to the department of corrections
in adopting rules under [section 4]. It is the intent of the legislature that rules adopted by the department
ensure public participation in the siting of a private correctional facility, ensure that the design and
construction of a private correctional facility be reviewed and approved by the department of administration,
and provide that the management and operation of a private correctional facility substantially conform with
recognized correctional standards, such as the American correctional association standards.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Policy. It is the policy of the state of Montana to encourage innovative
methods to provide the correctional resources necessary to confine persons convicted of crimes. The state
recognizes that there may be benefits to confining convicted persons in private correctional facilities
operated consistently with public policy.

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 5], the following definitions
apply:

- (1) "Department" means the department of corrections provided for in 2-15-2301.
- (2) (a) "Private correctional facility" means a correctional facility that is either privately operated
or privately owned and operated.
- (b) The term does not include a private detention center governed by Title 7, chapter 32, part 22.

NEW SECTION. Section 3. Private correctional facilities -- confinable persons. (1) An individual,

1 corporation, partnership, association, or other private organization or entity may not construct or operate
2 a private correctional facility unless licensed by the department.

3 (2) A person convicted in another state may not be confined in a private correctional facility in this
4 state unless the confinement is under and governed by Title 46, chapter 19, part 3 or 4.

5
6 **NEW SECTION. Section 4. License -- rules -- inspection.** (1) (a) The department shall grant
7 a license to a private correctional facility determined by the department to conform to [sections 1 through
8 5] and department rules.

9 (b) The department may grant a license to a nonconforming facility if the department determines
10 that the facility is making satisfactory progress toward substantial conformity with [sections 1 through 5]
11 and department rules and that the interests and well-being of the residents of this state and of the persons
12 to be confined in the facility are protected.

13 (c) The department may not grant a license to a private correctional facility unless the department
14 determines that the grant conforms to the long-range correctional goals of the department and state.

15 (d) The department may not grant a license to a private correctional facility until the facility has
16 provided the department with an indemnity bond that indemnifies the state and that is acceptable to the
17 department.

18 (2) The department shall adopt rules, including minimum standards, for the location, construction,
19 operation, management, and physical condition of private correctional facilities and for the security, safety,
20 health, treatment, and discipline of persons confined in them. The rules must provide for review and
21 approval of facility design and construction by the department of administration.

22 (3) The department shall at least annually inspect each private correctional facility to determine
23 compliance with [sections 1 through 5] and department rules.

24
25 **NEW SECTION. Section 5. Failure to comply with law -- action by department.** If the department
26 determines at any time that a private correctional facility does not conform to [sections 1 through 5] and
27 department rules, the department shall notify the chief executive officer and the governing board of the
28 facility. The notice must state the deficiencies and order that they be remedied within a reasonable period
29 of time. If the deficiencies are not remedied within that time, the department may hold a contested case
30 hearing under Title 2, chapter 4, and if the department finds that suspension or revocation is warranted by

1 nonconformance with [sections 1 through 5] and department rules, the department may suspend or revoke
2 the facility's license.

3

4 NEW SECTION. **Section 6. Codification instruction.** [Sections 1 through 5] are intended to be
5 codified as a new part in Title 53, chapter 30.

6

7 NEW SECTION. **Section 7. Effective date.** [This act] is effective on passage and approval.

8

9

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0083, as introducedDESCRIPTION OF PROPOSED LEGISLATION:

An act allowing and providing for the regulation of private correctional facilities; and providing an immediate effective date.

ASSUMPTIONS:

1. One 500 bed private correctional facility will be operating in Montana beginning in fiscal year 1999.
2. Department of Corrections (DOC), Professional Services Division personnel will be required to adopt/develop the standards and administrative rules in compliance with this bill pursuant to section 4(2). This personnel would also make licensing determinations based on these standards; initially every 6 months; after a record of compliance, annually. It is estimated that this would require 1.00 FTE Security Specialist/Inspector (grade 15) and 1.00 Administrative Support (grade 8). The grade 15 position would be located at the facility.
3. Operating expenses are \$3,900 per FTE plus \$3,962 for computer equipment for each FTE in fiscal year 1998.
4. The cost of licensing/regulation for the grade 15 position would be paid by the contractor and is reflected in general fund revenue in the table below.
5. The Department of Administration (DOA) will have minimal involvement in the adoption of standards and will not be involved in annual inspections. The department will be involved in the approval of the design and construction of the private facilities but the fiscal impact is estimated to be minimal.
6. The new correctional facility will employ about 125.00 FTE at an average salary of \$23,500 per year. The 5% average state income tax rate for these employees will generate about \$147,000 general fund each year.

FISCAL IMPACT:Expenditures:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
FTE	2.00	2.00
Personal Services	54,933	54,933
Operating Expenses	7,800	7,800
Equipment	7,924	0
Total	70,657	62,733

Funding:

General Fund (01)	70,657	62,733
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Revenues:

General Fund (01)	\$0	\$42,302
Payroll Income Taxes (01)	0	147,000

Net Fiscal Impact: (01)

(70,657)	\$ 126,569
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EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

There would be an undetermined impact to the tax base and economy of a county and/or city where the private correctional facility was located.

TECHNICAL NOTES:

1. The bill requires the DOC to act in a regulatory capacity over the private facilities that they are also contracting with. The DOA would be assuming a regulatory function by approving the design and construction of the private facilities.
2. General powers and duties of DOA, 18-2-105, MCA, may need to be revised to include the duties and responsibilities created in this bill.

Dave Lewis 1-8-97
 DAVE LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

ERNEST BERGSAGEL, PRIMARY SPONSOR DATE

Fiscal Note for HB0083, as introduced

HB 83

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 55th LEGISLATURE - REGULAR SESSION

SELECT COMMITTEE ON CORRECTIONS

Call to Order: By CHAIRMAN BERGSAGEL, on February 20, 1997, at 3:30 p.m., in Room 325.

ROLL CALL

Members Present:

Rep. Ernest Bergsagel, Chairman (R)
Rep. William T. "Red" Menahan, Vice Chairman (D)
Sen. B.F. "Chris" Christiaens (D)
Rep. Gary Feland (R)
Sen. Delwyn Gage (R)
Rep. Royal C. Johnson (R)
Rep. Betty Lou Kasten (R)
Rep. Matt McCann (D)
Rep. Daniel W. McGee (R)
Sen. Charles "Chuck" Swysgood (R)
Rep. Steve Vick (R)
Rep. Diana E. Wyatt (D)

Members Excused: None

Members Absent: None

Staff Present: Susan Fox, Legislative Services Division
Mike Wingard, Legislative Audit Division
Meg Angell, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 83 (2/13/97)
SB 99 (2/17/97)
Executive Action: None

ANNOUNCEMENTS:

Chairman Bergsagel RE: Rep. McCann will serve as Chairman for today's meeting.

Rep. Royal Johnson RE: Juvenile Justice Subcommittee

{Tape: 1; Side: A; Approx. Time Count: .2.}

HEARING ON HB 83

Opening Statement by Sponsor: REP. ERNEST BERGSAGEL, HD 95

{Tape: 1; Side: A; Approx. Time Count: 2.1; Comments: Rep. Bergsagel introduced the bill.}

Proponents' Testimony:

RICK DAY, Department of Corrections EXHIBIT 1
{Tape: 1; Side: A; Approx. Time Count: 3.2.}

GAIL JONES, Powell County EXHIBIT 2
{Tape: 1; Side: A; Approx. Time Count: 5.8.}

CHRISTOPHER MILLER, Powell County EXHIBITS 3 & 4
{Tape: 1; Side: A; Approx. Time Count: 8.7.}

MIKE VOELLER, Lee Newspapers EXHIBIT 5
{Tape: 1; Side: A; Approx. Time Count: 11.0.}

REP. LIZ SMITH, HD 56 EXHIBIT 6
{Tape: 1; Side: A; Approx. Time Count: 15.1.}

HARRY HELTON, Powell County Chamber of Commerce
{Tape: 1; Side: A; Approx. Time Count: 18.3.}

JAN BENDER, Powell County Chamber of Commerce
{Tape: 1; Side: A; Approx. Time Count: 18.6.}

CELE POHLE, Powell County Assessor
{Tape: 1; Side: A; Approx. Time Count: 19.0.}

LYLE GILLETTE, Deer Lodge City Council and Silver State Post
{Tape: 1; Side: A; Approx. Time Count: 19.2.}

LEE JEWELL, Powell County Progress
{Tape: 1; Side: A; Approx. Time Count: 20.3.}

Opponents' Testimony:

BETTY WADDELL, Montana Association of Churches
{Tape: 1; Side: A; Approx. Time Count: 20.8.}

SHARON HOFF, Montana Catholic Conference EXHIBIT 7
{Tape: 1; Side: A; Approx. Time Count: 27.9.}

TERRY MINOW, Montana Federation of State Employees EXHIBIT 8
{Tape: 1; Side: a; Approx. Time Count: 30.1.}

SCOTT CRICHTON, ACLU EXHIBIT 9
{Tape: 1; Side: A; Approx. Time Count: 34.7.}

Informational Testimony:

CHARLES JONES, Wakenhut Correctional Corporation EXHIBIT 10
{Tape: 1; Side: B; Approx. Time Count: .2.}

T.W. EDWARDS, Bobby Ross Group
{Tape: 1; Side: B; Approx. Time Count: 3.7.}

Questions From Committee Members and Responses:

{Tape: 1; Side: B; Approx. Time Count: 8.2; Comments: Now presiding: Vice-Chairman "Red" Menahan.}

Closing by Sponsor: REP. ERNEST BERGSAGEL

{Tape: 1; Side: B; Approx. Time Count: 28.0; Comments: Chairman Bergsagel emphasized this bill is not about "privatization" but is designed to regulate private facilities.}

ANNOUNCEMENT: Rep. Dan McGee RE: Subcommittee meeting, Friday, February 21, 7:00 a.m.; Room 312-2.

BREAK

EXHIBIT 11

{Tape: 1; Side: B; Approx. Time Count: 29.9; Comments: Exhibit 11 presented to secretary during break.}

HEARING ON SB 99

Opening Statement by Sponsor: SEN. FRED THOMAS, SD 31

{Tape: 1; Side: B; Approx. Time Count: 30.5; Comments: Sen. Thomas introduced the bill.}

Proponents' Testimony:

JOHN LARSON, District Court Judge, Missoula
{Tape: 1; Side: B; Approx. Time Count: 34.5.}

EXHIBITS 12-16

MIKE FERRITER, Department of Corrections
{Tape: 2; Side: A; Approx. Time Count: 2.4.}

Opponents' Testimony: None

Questions From Committee Members and Responses:

{Tape: 2; Side: A; Approx. Time Count: 4.1.}

Closing by Sponsor: CHAIRMAN BERGSAGEL, on behalf of SEN. THOMAS
{Tape: 2; Side: A; Approx. Time Count: 14.1.}

PRESENTATION: TOBY McADAM, former Montana State Prison Inmate
{Tape: 2; Side: A; Approx. Time Count: 14.2.}

QUESTIONS FROM COMMITTEE: None

PRESENTATION: MONTANA STATE PRISON CLASSIFICATION SYSTEM AUDIT
MIKE WINGARD, Legislative Audit Division EXHIBIT 17
{Tape: 2; Side: A; Approx. Time Count: 28.5.}

QUESTIONS FROM COMMITTEE:

{Tape: 2; Side: B; Approx. Time Count: 0.}

EXHIBIT 1
DATE 2/20/97
HB 83

Amendments to HB83

By Department of Corrections

Title, line 6.
Following: "DATE"
Insert: "AND AN APPLICABILITY DATE"

Page 1, line 23.
Strike: "5"
Insert: " 9 "

Page 2, line 2.
Following : "department"
Insert: "A license is nontransferable."

Page 2.
Following: line 6
Insert:

"NEW SECTION. Section 4. Department duties and responsibilities -- rulemaking authority. (1) The department shall adopt rules including minimum standards for the construction, operation, and physical condition of a private correctional facility and for the security, safety, health, treatment, and discipline of persons confined in them.

(a) The rules must provide for review and approval of the facility design and construction by the department of administration.

(2) The department shall at least annually inspect each private correctional facility to determine compliance with [sections 1 through 9] established, contract requirements and department rules.

(3) The department shall present a biennial report of compliance inspections to the legislature."

Renumber: subsequent sections.

Page 2, line 6.
Following: "License"
Strike: "-- rules"

Page 2, line 8.
Strike: "5"
Insert: " 9 "

Page 2, line 13.

Strike: "grant"

Insert: "issue"

Page 2, line 14.

Strike: "the grant"

Insert: "it"

Page 2, line 15.

Strike: "grant"

Insert: "issue"

Page 2, line 16.

Following: "with"

Strike: "an"

Insert: "a performance bond pursuant to 18-4-312, MCA and an"

Page 2,

Following : line 18.

Insert:

"(e) The department may not issue a license to a private correctional facility unless the facility is designed and constructed in accordance with the applicable American correctional association facility construction requirements. In addition the private correctional facility must comply with any other local, state or federal laws or regulations.

(f) The department may not issue a license to a private correctional facility unless the facility provides clear evidence of support from the residents of the county in which the facility is to be located.

(g) The department may not issue a license to a private correctional facility unless the facility has promulgated a policy to provide reasonable access to the facility by representatives of the public media.

(h) The department may not issue a license to a private correctional facility unless the facility has entered into an agreement with local and state law enforcement authorities for mutual aid assistance and notification in the event of an escape, natural or manmade disaster, riot, or other act potentially affecting the public safety.

(I) The department may not issue a license to a private correctional facility unless the legislature has appropriated funds for the housing of inmates in private correctional facilities."

Page 2, lines 18 through 23.

Strike: subsections (2) and (3) in their entirety

Page 2.

Following: line 25

Insert:

"NEW SECTION. Section 6. Licensure limitations -- siting of a private correctional facility. (1) The department may not issue a license to a private correctional facility

located within 2 miles of a public or private school, not including a home school. However, if a public or private school is established after a private correctional facility location has been approved, the department may not prevent the private correctional facility from operating because of this subsection (1).

(2) The department may not issue a license to a private correctional facility unless there has been a public hearing in the county in which the private correctional facility is to be located and unless the county commissioners approve the location of the private correctional facility by a majority vote.

(3) If the siting of a private correctional facility is proposed within 10 miles of an adjacent county, or if the department determines that there are reasonable expectations that the siting may have an impact on an adjacent county, the department may not issue a license to a private correctional facility unless the county commissioners of the adjacent county approve the location of the private correctional facility by a majority vote.”

NEW SECTION. Section 7. Requirements for requests for proposals -- contracts with private correctional facilities. (1) The request for proposal must include and identify the services requested and comply with the state’s request for proposal process pursuant to 18-4-304, MCA.

(2) A contract must specify the types and level of services to be provided by the contractor.

(3) A contract between the state and a private correctional facility for the housing of inmates may not exceed a term of 30 years and must contain provisions for renegotiation after 30 years. The provisions of 18-3-104 and 18-4-313 MCA, that limit the term of a contract, do not apply to a contract authorized by this section.

(4) The contract must specify that the private correctional facility shall grant access to department officials and legislative audit division staff or their representatives for compliance inspections and auditing. The contractor shall provide access to all areas of the facility and all records maintained onsite or offsite that pertain to all aspects of the private correctional facility, including but not limited to, operation, financial, and inmate records.

NEW SECTION. Section 8. Restrictions on inmate movements. An inmate may not leave the secure premises of the private correctional facility except to comply with a court order, to receive medical care that is not available at the private correctional facility, or as part of a work program without the express written approval of the department. Any movement of an inmate outside of the secure premises of the private correctional facility must be in compliance with approved policies and procedures established by the department.”

Renumber: subsequent sections

Page 2, line 25.

Following: “by department.”

Insert: “(1)”

Page 2, line 26.

Strike: "5"

Insert: " 9 "

Page 2, line 28.

Following: " within a "

Strike: " reasonable "

Insert: " specified "

Page 2, line 29.

Following: the first " time"

Insert: ", not to exceed 1 year "

Page: 3, line 1.

Strike: " 5 "

Insert: " 9 "

Page 3, line 3.

Insert: " (3) The department may assume emergency control of a private correctional facility if substantial violations exist that affect the health or safety of the inmates, facility employees, or the public or that otherwise substantially impact the security of the private correctional facility.

(4) If the department assumes control of the private correctional facility, the department shall suspend payment for any services, and will be responsible for the costs of assuming control.

(5) In the event that the contractor fails to comply with [sections 1 through 9]. department rules, or contract requirements, the state may retain the option of purchasing or leasing the facility.

(6) If either the state or the contractor fails to renew a contract the state may retain the option of purchasing or leasing the facility.

(7) If the state retains the option of purchasing or leasing the facility under subsections (5) and (6) of this section, because it requires the creation of state debt, the appropriation bill that funds the purchase or leasing of the facility must be treated in the same manner as a bill creating state debt and requires a vote of two-thirds of the members of each house of the legislature for passage."

Renumber: subsequent section

Page 3, line 4.

Strike: " 5 "

Insert: " 9 "

Page 3.

Following: line 5

Insert:

"NEW SECTION. Section 11. Applicability. [This act] applies to proceedings begun or contracts renewed on or after [the effective date of this act]. "

Renumber: subsequent sections

I APPRECIATE THE OPPORTUNITY TO COME BEFORE YOU TODAY IN SUPPORT OF HB 83 "AN ACT ALLOWING & PROVIDING FOR THE REGULATION OF PRIVATE CORRECTIONAL FACILITIES & PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHILE WE FELT THAT POWELL COUNTY HAD THE ABILITY TO BUILD A DETENTION CENTER(UNDER TITLE 7, CHAPTER 32, PART 22) IN DEER LODGE; CAUSE IT TO BE OPERATED UNDER THE DIRECTION OF A BOARD OF LOCAL CITIZENS; AND MANAGED BY A PROFESSIONAL CORRECTIONS FIRM WE ALSO FELT THAT BECAUSE OF CONCERNS VOICED BY THE DEPARTMENT OF CORRECTIONS AND A NUMBER OF CITIZENS WE DETERMINED THAT IT WOULD BE IMPORTANT TO SUPPORT THIS BILL THAT WOULD ASSURE THE PUBLIC AND THE DEPARTMENT OF THE SINCERITY OF OUR EFFORTS TO PROVIDE THE NECESSARY SERVICE AND INSURE THE PUBLIC SAFETY.

THE PARTICULAR CORRECTIONAL FACILITY WE ENVISIONED WOULD MOST CERTAINLY CONFORM TO RECOGNIZED CORRECTIONAL STANDARDS AND THAT VISION STILL HOLDS TRUE.

PUBLIC SAFETY IS KEY TO THE ISSUE OF CORRECTIONS. THE CITIZENS OF POWELL COUNTY AND MOST PARTICULARLY THE CITIZENS OF DEER LODGE AND THE DEER LODGE VALLEY ARE KEENLY AWARE THAT CORRECTIONAL FACILITIES AND THE CAREFUL AND PROPER MANAGEMENT THEREOF ARE CRITICAL. WE HAVE BEEN NEIGHBORS FOR MORE THAN 100 YEARS. THE CURRENT OVERCROWDING SITUATION AT MSP NEEDS TO BE ADDRESSED IMMEDIATELY AND WE FEEL THAT THE POWELL COUNTY PROPOSAL CAN PROVIDE A PART OF THAT SOLUTION.

THE FACILITY WE PROPOSE WOULD

1. BE SITED IN DEER LODGE, A COMMUNITY WHICH HAS A LONG HISTORY IN CORRECTIONS AND HAS BECOME ACCUSTOMED TO THE PROXIMITY OF SUCH A FACILITY.
2. BE CONSTRUCTED WITH FINANCING FROM THE SALE OF INDUSTRIAL REVENUE BONDS THUS RELIEVING THE TAXPAYERS OF MONTANA OF THIS BURDEN.
3. BE MANAGED AND MAINTAINED BY CONTRACT WITH THE BOBBY ROSS GROUP, A PROFESSIONAL CORRECTIONS MANAGEMENT FIRM
4. BE STAFFED BY A LABOR POOL IN POWELL COUNTY AND SEVERAL SURROUNDING COUNTIES
5. BE LOCATED IN AN AREA WHERE THERE IS A GREATER POSSIBILITY OF SHARED COSTS OF ANCILLARY SERVICES AND OPPORTUNITIES TO OUT SOURCE OTHER SERVICES TO PRIVATE BUSINESSES WHICH IN TURN COULD REDUCE COSTS.

WHAT WE ASK IN RETURN IS THE ABILITY TO CONTRACT WITH THE DEPARTMENT

OF CORRECTIONS TO FILL THE POWELL COUNTY FACILITY WITH THE OVERFLOW OF MONTANA INMATES SO THAT EMPLOYEES, INVESTORS, CITIZENS OF THE DEER LODGE VALLEY AND THE STATE OF MONTANA AND INDEED THE INMATES CAN BE ASSURED OF A QUALITY, WELL RUN AND SECURE INSTITUTION.

THINK OF THE 5 C's IN OUR PROPOSAL:

1-CRITICAL TO BUILD IN AN ACCOMMODATING LOCALE

2-COST EFFECTIVE-NO DIRECT COST OF CONSTRUCTION TO BUILD THE FACILITY

3-CRUCIAL TO BUILD IN A TIMELY MANNER FOR A GREATER ASSURANCE OF PUBLIC SAFETY

4-CENTRALLY LOCATED TO SERVICES, PERSONNEL AND PROGRAMS

5-CAREFUL PLANNING AND CONTRACTING TO PROVIDE SERVICES AND THE INDEMNIFICATION OF POWELL COUNTY AND THE STATE OF MONTANA.

CHRIS MILLER, POWELL COUNTY ATTORNEY, WILL PROVIDE A MORE DETAILED FOLLOW UP OF OUR PROPOSAL.

Eric Jones
Powell County Commissioner

EXHIBIT 3
DATE 2/20/97
HB 83

PROPOSAL

TO: Select Committee on Corrections

FROM: Powell County

The State of Montana is in the midst of a crisis in Adult Corrections. As a result of rising crime rates and the stern laws enacted in response, the adult prison population exceeds the state's capacity to house inmates.

The Department of Corrections is compelled to maintain the Montana State Prison population well above design capacity. Inmates are housed in county jails in numbers which strain the resources of local governments. Two hundred fifty (250) inmates have been placed in a private facility in Texas. All projections point to continued growth in the inmate population. There is a real, immediate need for inmate housing, the cost of which is becoming an increasing burden on the financial resources of the State of Montana.

Powell County proposes to assist the state in meeting the need for more prison space. Powell County intends to build a five hundred (500) bed detention center near Deer Lodge, which facility would provide the state with a cost effective resource for placement of inmates. The facility would also provide needed jobs and economic growth for Powell County and the surrounding area. This would be accomplished without the expenditure of public money for construction, and in a much shorter time than is required for the construction of state owned facilities.

An outline of Powell County's proposal is as follows:

1. A detention facility, as authorized by Section 7-32-2201 et seq MCA would be constructed on land owned by Powell County and the City of Deer Lodge west of Deer Lodge. The detention facility would house five hundred (500) inmates, and would include all necessary and

in compliance with recognized correctional standards.

2. The facility would be designated as a "project" as defined in Section 90-5-101 et seq MCA (The Industrial Revenue Bond Act). Funds for construction would be obtained by the sale of revenue bonds on the private bond market at no cost to state taxpayers. The projected cost of the project is approximately fifteen (15) million dollars. The City of Deer Lodge would obtain an EDC Grant to cover the cost of the construction of the necessary infrastructure for the facility.

3. The facility would be managed initially by the Bobby Ross Group, the same company that is currently under contract with the Department of Corrections to house two hundred fifty (250) Montana inmates in Texas. The Bobby Ross Group would be obligated to operate the facility in accordance with current correctional standards. The Bobby Ross Group would be required to indemnify Powell County and the State of Montana against liability for injury or loss occasioned by the operation of the facility.

4. Powell County would contract with the Department of Corrections to house inmates at rates competitive to those offered by county jails or by facilities in other states. Out of state prisoners would not be housed at the facility except as may be authorized by Montana law.

In conclusion, Powell County stands ready to take the steps necessary to provide a badly needed facility at no cost to the Montana taxpayer. All that is needed is a commitment from the legislature, state administration, and the Department of Corrections to use the facility once it is complete.

Submitted this 19th day of February, 1997.



Gail Jones, Chair
Powell County Commissioners

**BOARD OF COUNTY COMMISSIONERS
POWELL COUNTY, MONTANA**

RESOLUTION

WHEREAS, Powell County seeks to pursue the development of a five hundred (500) bed correctional center ("Facility"), to be located in Powell County; and

WHEREAS, Powell County seeks to retain professional assistance in the development, financing, design, construction management, and operation of the Facility; and

WHEREAS, Powell County has been presented with a Correctional Facilities Development Agreement ("Agreement") which will provide the professional assistance and services sought by Powell County; and

WHEREAS, Powell County finds that the Agreement is in the best interest of the County.

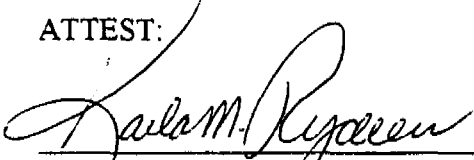
NOW THEREFORE, be it resolved that :

1. Commissioner Gail Jones, chairperson of the Powell County Commissioners is hereby authorized to executed the attached Agreement on behalf of Powell County; and
2. Commissioner Gail Jones shall act as the principal contact for Powell County with regard to the development of the Facility; and
3. Commissioner Gail Jones is hereby authorized to take such action and execute such documents as she deems reasonably required to implement the intent of the attached Agreement; and
4. Powell County specifically reserves the right to assign all of its interest and rights in and to the attached Agreement to such entities as County deems appropriated to implement the development, design, construction management, financing, and operations of the Facility.

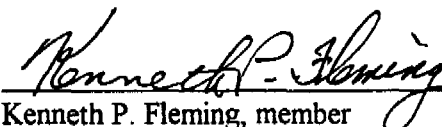
Approved upon a vote of 3 "yea" to 0 "no".

On this the 22nd day of October, 1996.

ATTEST:


Karla Rydeen, Clerk and Recorder


Gail Jones, chairperson


Kenneth P. Fleming, member

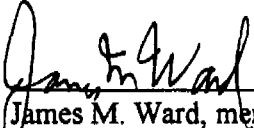

James M. Ward, member

EXHIBIT 4
DATE 2/20/97
HB 83

January 24, 1997

Dear Legislator,

The people of Powell County and specifically the Deer Lodge Valley are anxious for you to resolve the problem of overcrowding in our men's penal institution. Of all the communities in Montana we have a heightened awareness of the strain and pressure that the continual overcrowding has and is creating.

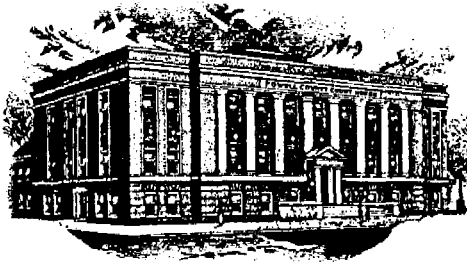
Since the late 1800's our community has been the "prison town" for the territory and now the state. A 1963 economic development study showed that the prison, as an industry, would not grow and in fact would decline. They couldn't forecast the decay of our society and the justified new laws to curb those injustices.

The department of corrections figures of 1,500 new inmates by the year 2001 are fair and accurate. Don't be misled in believing, as past sessions have, that the problem has been blown out of proportion or that it will simply go away.

As fellow taxpayers, we see the building of rooms far cheaper than the expense of lost lives and lawsuits. We envision an eruption of violence that will occur inside the walls if you don't react quickly to this dilemma. We have the utmost confidence in the staff at MSP that if any event would occur it would be handled within their perimeter. They are our neighbors and with approximately 51 % of the employees at MSP living in Powell County; we sense the added stress in our neighbors daily lives which is caused by the overcrowding.

The City of Deer Lodge and Powell County responded to our neighbors when they signed a letter of intent with the Bobby Ross Group to create a public/private partnership to ease the overcrowding at MSP. This 500 bed men's facility would be built in roughly 12 months utilizing a 20 year revenue bond with no construction cost to the State. Employees will be in the private sector. Tax revenue will be derived from the complex. However, investors need assurances that this facility will operate at maximum efficiency. This can be accomplished two ways. The State of Montana would enter into an agreement contracting a high percentage of the rooms and/or allow out of state prisoners. This agreement should be reflected until the bond is retired. Local, State and Federal controls are all built into the flow chart. The organizational flow is similar to many of our local hospitals with the management firm on the bottom of the rung. Corrections, as in health care, is a very complex industry and must be managed correctly. The Bobby Ross Group has that expertise.

The other alternative is for the State to build the needed housing as in the administrations budget. The state facility would be tax exempt and employ another 100 or more state employees.



COUNTY OF
POWELL

DEER LODGE, MONT.

-2-

Harry L. Hiltner Executive Secretary Chamber of Commerce
Mr. E. Gillette Jr., PRESIDENT, DEER LODGE CITY
COUNCIL.
Jan M. Bender President Powell Co. Chamber of Commerce
R. L. Don Powell Co. Attorney
Kenneth P. Fleming Powell Co. Commissioner
Fayton A. Jewell Powell County Progress
Neil Jones Powell County Commissioner
Willie Jones Powell County Assessor

EXHIBIT 5
DATE 2/20/97
HB 83

Feb. 20, 1996

Testimony by Mike Voeller, Lee Newspapers of Montana, in support of House Bill 83 before the House Select Committee on Corrections.

Mr. Chairman, members of the committee, for the record by name is Mike Voeller. I represent Lee Newspapers of Montana. I rise in support of House Bill 83 as amended, or as we hope it will be amended.

I am not here to discuss the pros or cons of prison privatization. Our concern is that if privatization should occur the public's constitutionally guaranteed right-to-know and right to access remain unfettered.

The diminution of the public's right-to-know and ability to report on what is clearly the public's business is best illustrated by the recent experience of Lee State Bureau Reporter Kathleen McLaughlin and her attempt to report on the transfer of Montana inmates from the state prison to a private prison in Texas.

The following is a summary, in her own words, of Ms. McLaughlin's difficulty in gaining access to the Dickens County Correctional Center in Spur, Texas, and I quote:

"In the latter part of August 1996, after the second group of Montana inmates was moved to Texas, I began making inquiries about taking a trip there to check the place out. Our papers felt it was an important story to check out the prison to which Montana had agreed to pay \$3.6 million per year, especially in light of recent problems and lawsuits against the Corrections Department.

"For the first few months I had no luck getting anyone from the Bobby Ross Group, which runs the prison, to return my calls. Finally, when I did speak to someone from the state Corrections Department, they informed me that the contract Montana signed with the prison gave that private entity the discretion over whether to allow media to tour. Gov. Marc Racicot then told me there was nothing he could do to help me; that it was up to the private company.

"Finally, after trying to convince the private company to no avail, I called Rep. John Cobb in early November. Rep. Cobb then made some calls, and the governor's office connected me with T. W. Edwards, the Bobby Ross Groups' governmental affairs officer in South Carolina. Edwards, whose job is to lobby on behalf of the private prison group, promised to set up a tour and told me to work out the arrangements through Terry Pelz, head of the Texas prison operations.

"Although they agreed to let me tour the prison, Pelz informed me that I was not to speak with any inmates or guards at the facility. In addition, he told me I could spend no more than an hour or two inside the jail and was vehement that no photographs be shot on the premises. I worked around some of the problems by contacting inmates by telephone and through the mail for interviews before I left for Texas.

"The trip was a success, since I had already interviewed about 25 inmates before I even left Helena. I have since learned, however, that the Bobby Ross group has placed a block on the Lee State Bureau telephone number, so inmates can no longer call me to discuss their concerns.

"In short, I spent about three months working to get a two-hour tour, and my access to inmates has once again been cut off. This is in stark contrast to the policies of the Montana State Prison, where access is fairly open and inmates are available for interviews. \$3.6 million is a sizable chunk of cash, and the public should know something about where their money is going."

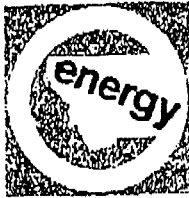
This is hardly our idea of how any privatization agreements signed by Montana should work. I have discussed our concerns regarding access to inmates and staff with Rep. Bergsagel as well as an amendment that we believe will guarantee the public's right to know should privatization occur.

I feel that this is a friendly amendment and hope that you will consider it in that light. I understand more work will be done on this bill, so I'm not sure exactly where the amendment fits.

However, we respectfully request you consider the following language for inclusion in House Bill 83 as you refine it:

Proposed amendment: *"The contract must also require that the private entity provide access to individuals and information concerning the privatized program to the same extent that access was available while the program was being performed by the state agency."*

Thank you.



**Montana Energy Research
and Development Institute, Inc.**

Post Office Box 3809
Butte, Montana 59702
(406) 782-0463

EXHIBIT 6
DATE 2/20/97
HB 83

February 19, 1997

Rick Day, Administrator
Department of Corrections
1539 11th Avenue
Helena, MT 59620

Dear Rick:

This letter is to report on the progress of the Regional Corrections Facility being made by our respective non-profit organizations relative to the construction of a Regional Corrections Facility to be located in Southwestern Montana.

You will recall from our previous visits that our organizations, The Montana Energy Research and Development (MERDI) Institute and the Community, Corrections, and Counseling Services (CCCs), are 501(c)(3) non-profit agencies dedicated to serving the needs of the communities in Southwestern Montana. We can make a substantial contribution to our area, as well as the State of Montana, by constructing a Regional Correction Facility that would serve the incarceration needs of the various counties, and at the same time provide the State of Montana with a solution to the overcrowding situation at Montana State Prison in Deer Lodge.

We have made a lot of progress has been made since we last visited with you:

Support:

We have the formal support of the Butte-Silver Bow and Anaconda-Deer Lodge Consolidated City/County Governments and working with other counties in Southwestern Montana and fully expect formal support from at least two other counties next week.

Design Capacity:

We have an excellent preliminary design and more accurate cost estimates. Current plans include 500 beds for state prisoners and 75 beds for local government prisoners.

Funding:

Over the past several days we have carefully reviewed our architectural and engineering plans as well as our cost estimates. This review confirms that we, indeed, have a viable project. We are convinced that the current design will provide us the opportunity to operate with maximum efficiency while providing services that are equal to or better than the services now being provided at the Montana State Prison.

Our analysis further leads us to conclude that we may be able to construct the facility in the absence of state capital funds. This would, of course, make the financial plan more difficult to achieve, and would depend on our ability to enter into long term, guaranteed occupancy, contracts with the Department of Corrections, and units of local government.

Letter to Rick Day

Page 2

Location:

We have identified property at the Galen Campus for the site of facility. We believe this property now leased by Anaconda Deer Lodge Local Government is an ideal central location for the facility. The Anaconda Deer Lodge Local Government is fully supportive of the plan to site the facility at this location.

Legislation:

We have had drafted and introduced legislation that revises the Regional Correctional Facility Act to permit the Department of Corrections to enter into agreements with non-profit corporations that are designated by units of local government to act on their behalf.

The proposed legislation as currently written also allows the proceeds of the long-range building program general obligation bonds to be used to contribute to the state's portion of construction cost. Additionally, the legislation proposes to allow local governments and the state to enter into long term agreements with the non-profit operators of a correctional facility.

We would welcome an opportunity to meet with you to discuss our developing plans.

Sincerely,



Don Peoples and Mike Thatcher

cc: Southwest Montana Delegation
Select Committee on Corrections

Powell County Progress

February 17, 1997 

Select Committee on Corrections
Capital Station
Helena, Montana 59601

Chairman Bergsagel and Members of the Committee,

Powell County Progress is an economic development corporation. We recommend that you support the proposal that has been developed by Powell County and the Bobby Ross Group for a myriad of reasons. Of all the reasons that we will exhort the one that ultimately stands out is "It just makes sense!"

Deer Lodge has been the historic "prison town". Deer Lodge, it's populace and vendors accepts institutions. We understand and accept the consequences of that notoriety. Jobs are a plus we have 51% of the employees living in Powell County. - Fear of a prison town and its' environs has thwarted our natural growth. + Montana State Prison has been a good neighbor. - 60 acres of land, personal property and a multi-million dollar complex is all non-taxable. The pros-and cons, as in any similar circumstance, are endless, however Deer Lodge has adapted.

The State of Montana, due to erroneous assumptions by its predecessors in the Dept. of Corrections, is over 8 years behind in the building of the necessary inmate space. To have our tax dollars build what is required now and in the future will rob funding from other necessary government spending. While the idea of regional facilities, and the holding of local inmates, is a respectable solution, it will take some time to build and receive those communities approval.

The Powell County solution is simple and clean. Build a 500 bed facility in Deer Lodge without tax dollars, bring over 3 million tax dollars back to the State and employ Montanan's instead of Texan's. Long term costs of employees must not be ignored by the State. These Correctional Officers will be trained in conjunction with the MSP employees. Thus offering the State added support if needed. The Bobby Ross Group will mimic the employee wage and benefits that our State officers are receiving. They are not opposed to its' employees becoming unionized. A private managed prison also offers retired personnel from the Department of Corrections to embark on a second career instead of going out of state.

The Powell County Hospital is already a provider for the MSP inmates and will offer a contract to BRG. That will insure a continuum of health care.

Powell County Progress strongly recommends that you and your committee endorse the Powell County plan. We view this facility as an adjunct to the Montana State Prison and not a Regional facility. Overcrowding at the current facility is at a dangerous level. We can ease your burden with having our facility running in 12 months by a professional management team.

As we stated before "It just makes sense!".

Lee Jewell
President of Powell County Progress



SILVER STATE POST

Box 111

Deer Lodge, MT 59722

(406) 846-2424

FAX (406) 846-2453

February 17, 1997

Select Committee on Corrections
Capitol Station
Helena, MT 59601

Dear Chairman Bergsagel and members of the committee:

I'm writing in support of building a county-owned, privately-operated 500 men's prison in Deer Lodge. I sit on the Department of Corrections Advisory Council and am very familiar with the problems facing the state in housing prisoners.

It's obvious that something must be done in the near future to alleviate the overcrowding at the present facility, to bring Montana's prisoners back from Texas, and to prepare for future needs. Given the present climate in the state against raising taxes, the prospect of building a state-owned facility or building more regional prisons doesn't seem feasible. I feel, as a taxpayer, that a county-owned, privately-managed facility is a very appropriate response to the problem. In addition, I feel Deer Lodge is the most logical location for such a facility.

First, and foremost, Deer Lodge is a prison town. As you know, it takes more than a plot of ground and political clout to host a prison. It takes a proud community willing to support the facility and its programs. The Montana State Prison has been a major part of Deer Lodge history since the 1800s. There are local families having two and three generations who have worked at the prison and they take great pride in that tradition. Similar pride and acceptance will be hard to establish in another community. I feel you will face great opposition from citizens in other areas who want the economic benefits of a prison in their town but don't want 'dangerous' inmates in their neighborhoods.

Second, by placing a privately-managed facility in Deer Lodge near MSP, corrections officials will better be able to maintain 'quality control' in housing, care and training programs for inmates. If an agreement can be made for a private prison to contract to use the laundry and kitchen facilities, then consistent quality care can be assured and per inmate daily costs could be kept near MSP's daily rate. Sharing services as well as training could be very beneficial and cost-saving to the state.

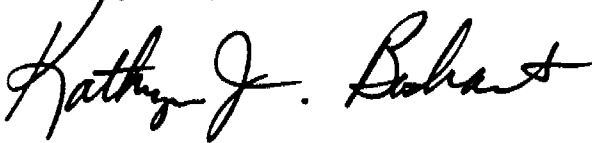
Montana State Prison is one of only a few prisons in the country that continues to house all levels of inmates, from minimum to maximum, within the same facility. That mix is potentially dangerous and hard to manage. I have always felt that building a second prison close to MSP to house only minimum security inmates was a good idea. That would turn the state's present

facility into a medium-maximum prison and provide for a much more efficient use of staff. I know that the present arrangement of maintaining all levels of security at MSP, coupled with inmates residing in Texas and hundreds of others waiting in county jails, has made management is a logistical nightmare.

I urge you to examine the situation closely and talk to those people who have lived with a prison literally on their Main Street. The citizens of Deer Lodge know what it takes to operate a prison. Please, listen to them.

Your decision should make good economic and social sense. Forget the politicians and the pressure from economic development groups. You need to decide what's the most economical for the state and what's best for the inmates.

Thank you for your consideration,

A handwritten signature in black ink, reading "Kathryn J. Boshart". The signature is fluid and cursive, with a large initial "K" and a stylized "B".

Kathryn Boshart
Editor/Publisher
Silver State Post

R.F. LABBE, Mayor

KERMIT DANIELS
City Attorney

BARBARA P. McOMBER, CLERK
DIXIE HENDERSON, Treasurer

CITY OF DEER LODGE

300 MAIN
DEER LODGE, MT 59722-1098
(406) 846-3649
(406) 846-2238

MAURICE R. SIVERTSON
LYLE E. GILLETTE, JR.
JOHN J. MOLENDYKE
HELEN G. GILL
FRANCES B. HELTON
GARY W. CHILCOTT
JIMMY RAY ANDERSON
EUGENE L. HURLBERT

February 11, 1997

Select Committee on Corrections
Capitol Station
Helena, Mt. 59601

Dear Chairman Bergsagel and Member of the Committee:

As Mayor of the City of Deer Lodge, I am writing this letter to request your support to construct a Private Prison in Deer Lodge.

Deer Lodge is a prison town and has been since the turn of the century. We have grown to cope with problems facing Prison-City as they occur. I feel the City of Deer Lodge has very good rapport with the Department of Corrections and Prison in general.

The labor pool from this area, Butte-Anaconda and Deer Lodge has proven to be more than adequate.

The projections for the future are scary. The Prison System needs help now. It is truly a shame to see millions of Montana tax dollars going to Texas when they could stay in Montana.

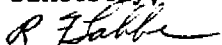
The local Hospital is already providing health care for the Prison and can handle the increase without a problem.

I have met with the Powell County Sheriff's Department and since the City and County consolidated Police forces they feel they can handle any problems that might arise and have adequate manpower to do the job.

This facility can be built without cost to the State and the vendors that service the State Prison have assured us that they can handle any increase without a problem.

Now is the time to act to help solve one of the biggest problems facing the state. Let us build a private Prison in Deer Lodge.

Sincerely,



R.F. LABBE,
Mayor

RFL/dh

February 13, 1997

TO: Steering Committee on Corrections

FROM: Tom Cotton

RE: Support of Private Prison in Deer Lodge

This letter is to support the interest to build a privately run prison in the Deer Lodge Valley. Given the current situation at the State Prison, it is apparent that additional facilities will be needed to house the influx of new prisoners. The choice appears to be between the state providing the resources or allowing private investors the opportunity to build these facilities. In a time when the state is struggling to provide needed services for all Montanans it seems reasonable to head in the direction of privatization of our prisons. As a resident of Deer Lodge I find there are many positives to this proposal and very few negatives. Let's begin the process of developing a system that will deal with this problem once and for all without draining all of our state resources.

Tom Cotton



Powell County Memorial Hospital

1101 Texas Avenue • Deer Lodge, Montana 59722
Phone (406) 846-2212 • FAX (406) 846-3074

MEMORANDUM

DATE: February 10, 1997
TO: Board Members
FROM: Tony Pfaff, CEO
Subject: Montana State Prison Request For Proposal (RFP)

Enclosed you will find a draft copy of the response to the Montana State Prison RFP on privatizing the health care at MSP. Please remember that this is a draft and far from a final version. Ignore any typo's, grammar, or formatting problems. These problems will be corrected prior to finalization. The vast majority of the RFP is simply a direct response to the question or statement of the Department of Corrections.

The last page of the document, which refers to pricing, has not yet been completed. Bob Brendgard, Rob Johnson, Mark Hawkins, and I will be meeting on Wednesday to hopefully finalize the strategy. We hope that the proposal will be completed by the end of this week.

If you have any questions or comments prior to the February 18, 1997 meeting please call.

Powell County
Republican
Central Committee
222 N. Main
Deer Lodge, MT 59722

February 12, 1997

Select Committee on Corrections
Capital Station
Helena, MT 59601

Chairman Bergsagel and Members of the Committee

The Powell County Republican Central Committee wishes to express support for a 500 bed men's prison facility in Deer Lodge as proposed by the Bobby Ross Group. Current overcrowding in the existing facility and projected increases in the prison population must be addressed. And this proposal fits the bill.

Deer Lodge has been home to the state's penal institution since the turn of the century. The community is used to having a prison in its midst and an expansion of the prison is not a cause for concern. Local institutions, organizations and businesses have developed a level of expertise in the needs and requirements of the prison which would be hard to duplicate elsewhere. Local law enforcement, the county justice system, the hospital and local vendors all have the capacity to address the needs of the new facility.

It is also the Powell County Republican Central Committee's belief that the proposal to build a private penal institution in Deer Lodge encompasses many of the core beliefs of the Republican Party: Reducing the size of government - this is a private enterprise; reducing cost of government - no state construction funds required; and privatization of government functions where it makes sense.

Respectfully submitted



Stephen J. Flynn, Chairman
Powell County Republican Central Committee

MEMORANDUM

DATE: February 7, 1997

TO: Corrections Committee,
Montana Legislative

FROM: Judy Bolton

The people in the Deer Lodge Valley are anxious for a solution to the overcrowding of the mens' prison.

Reasons to consider:

A letter of intent between the City of Deer Lodge, Powell County and the Bobby Ross Group from Texas has been signed to create a public/private partnership to ease overcrowding.

A 500 bed mens' facility would be built in approximately 12 months utilizing a 20 year bond with no construction cost to the state.

Employees would be in the public sector.

Revenue would be derived from the complex.

The Bobby Ross Group has expertise (statement by Montana group after visit to Texas, "that's how a prison should be run.")

Deer Lodge has the "prison town" image and expertise. We have already adopted to the needs and stresses of a prison.

Our hospital is cooperative and available.

Our location is cost-effective - considering all things - only one of them being cost of transporting prisoners to hearings.

The people are in favor.

We ask you to consider our offer when it is submitted.



Montana Catholic Conference

February 20, 1997

Testimony before the House Corrections Select Committee - HB 83 - Allow and Regulate Private Correctional Facilities

Mr. Chairman, members of the committee, for the record, I am Sharon Hoff, Executive Director, Montana Catholic Conference. I act as liaison for Montana's two Roman Catholic Bishops on issues of public policy.

The Montana Catholic Conference is opposed to HB-83. Privatizing prisons is bad public policy. Private prisons may save the state some dollars in the short term, but since the private prison is driven by the bottom line, necessary services can easily be cut to create higher profits.

Our criminal justice system is failing. Clearly, those who commit crimes must be swiftly apprehended, justly tried, appropriately punished, and held to proper restitution. However, correctional facilities must do more than confine criminals; they must rehabilitate persons and help rebuild lives. The vast majority of those in prison return to society. We must ensure that incarceration does not simply warehouse those who commit crimes but helps them overcome the behaviors, attitudes, and actions that led to criminal activity.

The answer is not simply constructing more and more prisons but also constructing a society where every person has the opportunity to participate in economic and social life with dignity and responsibility. People must answer for their actions. Those who harm others must pay the price, but all our institutions must also be held accountable for how they promote or undermine greater responsibility and justice.

Bumper sticker solutions--"three strikes and you're out"... "two years and you're off" ... "one more child and your benefits are cut"--are no substitute for less appealing but more effective efforts to fight crime and strengthen families. Our state needs to focus its energies and resources on helping communities combat crime and helping families overcome destructive moral and economic pressures, discrimination, and dependency. We need both to hold people accountable and offer them concrete help and hope for a better future.

Prison overcrowding is a critical issue confronting the criminal justice system. We support more cost-effective, community-based, restitution-oriented options to reduce prison overcrowding, and lower recidivism rates, while protecting the public from offenders. The emphasis of programs should be on rehabilitation, not merely punishment, and particularly not just warehousing.

We urge your defeat of HB-83. Thank you.



EXHIBIT 8
DATE 2/20/97
HB 83

Mr. Chairman, members of the House Select Committee. My name is Terry Minow. I represent the Montana Federation of State Employees. We represent many of the employees of Montana State Prison, including correctional officers, rehabilitation specialists, correctional counselors, teachers and registered nurses. I appear today in opposition to HB 83.

Our opposition is based on three premises. First, the costs of private correctional facilities are not properly figured when comparing private and public correctional facilities. Secondly, certain functions of government should not be privatized as a matter of public policy. Finally, correction decisions should not be made in haste, as our past history will prove.

The first point I would like to make is that private prisons may be cheaper at first glance, but are they really cheaper in the final analysis? We believe that providing rehabilitation services and educational services is not a luxury, or a frill--it is a necessity. When we lock felons up, we do not throw away the key. The vast majority of these individuals will be released--it is in society's best interest to make sure that they have some ability to provide for themselves upon their release. Providing work, or education, or rehabilitation, also makes a facility more secure and safe for the inmates and the staff. If the state of Montana provides these services, and the private prisons do not, of course the private prisons will look less expensive--because they are not providing the same level of service.

Along those same lines, what kind of education and training will be provided to the staff who work in the private facilities? What kind of pay and benefits will they receive? It has been our experience that privatization of public services often means a drop in the standard of living of those working to provide the services--and that is how the cost savings is achieved. High turnover and poor quality services may be the

result.

Secondly, it is our belief that the power to imprison, including setting standards for correctional facilities, is a proper function of government and this legislature. This bill calls for two individuals to watch dog a private prison that will employ 125 people. Is that really an adequate level of supervision?

Mr. Chairman, this is a major commitment for the state of Montana, a commitment to a new form of corrections, correction facilities provided by the private sector. We are concerned that a commitment of this nature is being discussed very briefly, that we as a state may not be aware of the ramifications of this major policy decision, and that acting in haste could result in more expensive costs down the road. We've certainly seen the results of changing corrections policies without studying all the ramifications, whether we're talking about mandatory sentencing or the ^{projection} ~~assumption~~ several sessions ago that only 850 prisoners would be incarcerated in our prisons.

Finally, we would ask this legislature to think carefully about all of the ramifications of this major decision. House Joint Resolution 19, sponsored by Rep Mercer, calls for a study of correctional standards, including those to be provided in private facilities. ~~It makes sense to study the concept~~

Thank you for the opportunity to appear before your committee in ~~first~~ ^{first} opposition to HB 83.

~~then decide whether or not to implement the~~

It makes sense to have the study before committing to private prisons.



EXHIBIT 9
DATE 2/20/97
HB 83

P.O. BOX 3012 • BILLINGS, MONTANA 59103 • (406) 248-1086 • FAX (406) 248-7763

February 19, 1997

Mr. Chairman, Members of the Committee:

For the record, my name is Scott Crichton, Executive Director of the American Civil Liberties Union of Montana.

The private prison debate is upon us, but it would seem from accounts in the press, that the debate has already been concluded and that the outcome is clear- full speed ahead on privatizing prisons. While there is a rush to privatize all sorts of governmental functions, I am not convinced that any of the other privatization initiatives compare with privatizing prisons. The power to imprison is the most extreme sanction the state has against an individual short of the death penalty. And yet, it seems ironic c that we have spent more time and energy discussing delegating some lesser functions of government, like privatizing liquor r stores, than we are willing to devote to this central issue dealing with a core governmental function.

I remember thinking when we all found out that the DOC had committed \$3.6 Million to the Bobby Ross Group for out of state placement of inmates, my initial response was that this was a back door effort to introduce privatized prisons into the Montana corrections system.

But when you look at this bill's statement of intent, it begins in lines 10-11 "It is the intent of the legislature that rules adopted by the department ensure public participation in the siting of a private correctional facility". Where was I when the public participation was sought to determine whether the public wants privatized prisons? I don't remember the public or the legislature for that matter being consulted in any meaningful fashion when the Department first committed public dollars for private for profit prison space in Texas. Making that decision was a small bite sized initial affair experimenting with privatization. What are the early results from that experience?

In the Inmate Housing Agreement Montana Department of Corrections and County of Dickens, Texas: under 3. Termination- we have the assurance that "in the event the termination of this agreement without cause is due to the necessity to provide

additional bed space for Texas inmates, the STATE's inmates shall have priority for bed space in the Facility over all other inmates with the exception of Texas inmates." So this agreement is good through June 30, 1999 or until Texas needs the beds back.

This may sound like I'm arguing for private beds in Montana. That is not the case. Rather I'm asking questions regarding policy that need to be aired in full frank and honest way with citizens statewide. Not in DOC dog and pony show style, but perhaps with a sensitivity and professionalism that National Institute of Corrections has in their PONY programs regarding community responses to jail needs.

We're not yet into the 4th quarter of our experiment with privatized prisons in Texas, but some important questions have already been raised since the first 125 prisoners were moved at the end of June. For example, while the firing of the warden in the aftermath the inmate sit down strike was a personnel decision, the situation illuminates some real problem areas. How does the training compare for Corrections Officers working for the State of Montana versus recruits brought in to take over this Bobby Ross jail? Or if, as was the case in New Jersey two years back at the Immigration and Naturalization detention facility, the people running the private for profit facility are unable to maintain order, or worse, abdicate their responsibilities and vacate their posts, who then is in charge, and who then is their back up? What is their training, and who pays for them and then is in command?

If an inmate peacefully sitting down in protest over food conditions had been seriously injured by the live fire ordered by those in charge, or even killed, where would liability lie? Would the private facility claim they are not governmental entities and so are beyond public accountability as public actors? Would the State and the Contractor share liability? Would the immunities provided public employees be extended to employees of a private for profit company?

In the June 10, 1996 decision in the *McKnight** case, the Sixth Circuit held that private prison corporations are subject to Section 1983 suits as state actors but do not get qualified immunity because such corporations are more concerned with their profit margins than the public good. The Court recognizes that this ruling will likely result in increased litigation costs which will be passed on to the state.

As expressed by the Billings Gazette Opinion "Montana deserves answers". I'm not here to air the laundry associated with the Texas specifics, but rather to raise the concerns that are derivative from that experience and discuss their Big Sky impacts if indeed the people choose to continue down the path of privatization.

When and where was the debate held in discussing the pros and cons of privatization

* 88 F.3d 417: 1996 US App.

generically? It wasn't among the publicly discussed options less than a year ago-except euphemistically regarding shipping some out of state while we build regional prisons. Was it held before the mid October news of BRG looking to offer 125 jobs to the Deer Lodge Valley with construction as early as Jan 1998? It must have taken place over Thanksgiving, at least it was December 11 news that Rick Day is quoted "that in the coming years about 500 inmates each year will probably be held in private jails, whether out of state or in Montana." When they began sending inmates to Texas, state officials billed the move as a temporary solution to prison overcrowding. By Christmas eve, news was that \$11.8 million out of \$49 M being sought was for private beds. "Contracting for services would be faster than having the state build its own prison space to keep up with rapidly increasing inmate population", Day is quoted as saying.

Isn't that a rather hasty and somewhat stealth debate upon which we are now being asked to base major policy decisions with huge implications for generations to come? Speeding up the process of expanding our prison population could have tragic costly consequences. We over build. We always fill (beyond capacity) what we build. Will private prison bed spaces remain cheap once they become a significant portion of our prison system? Do private prisons maximize their profits by keeping as many people locked up for as long as possible? Or is that done by cutting health, safety and training standards? The profits to be made in the correctional-industrial complex (of which private prisons are part) are driving and distorting our criminal justice policies and will resort in enormous social and economic costs to society. Hard beds reserved for hard criminals makes sense. But hard beds should be last options for the majority of people in the corrections systems.

So let me close by saying that I am not against the state regulating and the public having the right to know regarding privatized governmental functions. It is for that reason that ACLU supported SB 200, which was opposed by the Governor and tabled February 12th. But I am still not conceding that it is inevitable that we make that radical commitment. I have included with my testimony two pages of conclusion from the Department of Corrections Advisory Council. I hope reading that will spur you to read the report in its entirety before passing any measure authorizing operations of private prisons in Montana. And I hope after reading it, you will reach a similar conclusion to go cautiously, go warily, and proceed when the facts are known and scrutinized in public discourse. I would suggest that this body appoint a commission, of corrections professionals and a committee like the DOC Advisory Council, and authorize their focus to evaluate what has been the experience in other states and what are the lessons to be learned before we commit down that path.

Thank you for your time and consideration.

Conclusion

The Advisory Council reviewed trends in the growth of state corrections populations, the Department's correctional population projections and the Department's plans to address future demand for services. This process has led the Council to conclude that most citizens are not familiar with the structure of the State's corrections system or the variables and entities that control the size of corrections populations. The Council believes that improved public understanding is important to the development of effective steps to resolve corrections system overcrowding.

The Advisory Council has also concluded that corrections overcrowding will persist until the demand for corrections services is balanced with the supply of those services and the State's ability and willingness to pay for them. The Council believes that the Department's adherence to its Mission Statement will carry out the public's wish to "get tough on crime" and bring accountability back to offender programs. Prison overcrowding cannot be solved solely by the Department, but must be embraced by the citizens and carried out by their political representatives.

The Advisory Council strongly recommends that the Department actively continue and expand efforts to alert and inform the public about correctional issues. Furthermore, the Council recommends that the Department recruit additional representatives of the Judiciary, the Legislature and law enforcement to support and assist those efforts.

The need for long term conclusive corrections planning and funding is apparent to this Council. The Department is proposing a substantial capacity expansion plan which was increased to accommodate larger projected populations. This increased capacity may still fall short of projected offender populations, due to continuing growth trends, sentencing changes and other contingencies..

The Advisory Council has not had sufficient time to analyze each department budget proposal. However, the Council recognizes the plans rely on a multi-faceted response to ever increasing correctional populations. This plan creates partnerships with local governments and new state facilities, and supports a realistic approach based on effective staffing levels and actual populations.

The Council concludes that the eventual solution to prison overcrowding in Montana will necessarily involve a renewed long-term commitment to the youth of this state. That commitment will involve placing a priority with the juvenile justice system so that limited financial and other resources will be considered for use first by the juvenile justice system when legislative decisions are being made with regard to state corrections. The Council believes that this basic change in philosophy is a vital investment in the future of corrections and the State of Montana.

The Council specifically endorses the concept of long term planning based on factual projections and generally endorses the Department's recommendations.

The Advisory Council also recommends that the Department:

- Continue to improve population projections.
- Pursue technological advancements via an integrated network in coordination with existing and proposed information systems.
- Continue public information efforts.
- Continue to explore options/suggestions which have come to the Department's or Council's attention since we began our public discussions, such as:
 - 1) A private prison equipped to incarcerate 500 state inmates,
 - 2) A new 500 state close/maximum security prison,
 - 3) A community based intensive/residential sex offender program,
 - 4) A 15-20 bed contract or facility to respond to the increasing number of 14-20 year olds sentenced as adults,
 - 5) A specialized program directed to 4th offense DUI inmates,
 - 6) A chemical dependency corrections facility.



WACKENHUT CORRECTIONS CORPORATION

Exhibit # 10

The full exhibit is available from:
MT Historical Society Archives
225 North Roberts
P. O. Box 201201
Helena, MT 59602-1201
Phone: (406) 444-4775

STATE OF MONTANA



Overview of Prison Privatization

by

Charles R. Jones
Senior Vice President, Business Development
WACKENHUT CORRECTIONS

J. Riley Johnson
Mitsi Corporation

February 14, 1997

Powell County Progress

February 17, 1997

Select Committee on Corrections
Capital Station
Helena, Montana 59601

Chairman Bergsagel and Members of the Committee,

Powell County Progress is an economic development corporation. We recommend that you support the proposal that has been developed by Powell County and the Bobby Ross Group for a myriad of reasons. Of all the reasons that we will exhort the one that ultimately stands out is "It just makes sense!"

Deer Lodge has been the historic "prison town". Deer Lodge, it's populace and vendors accepts institutions. We understand and accept the consequences of that notoriety. Jobs are a plus we have 51% of the employees living in Powell County. - Fear of a prison town and its' environs has thwarted our natural growth. + Montana State Prison has been a good neighbor. - 60 acres of land, personal property and a multi-million dollar complex is all non-taxable. The pros-and cons, as in any similar circumstance, are endless, however Deer Lodge has adapted.

The State of Montana, due to erroneous assumptions by its predecessors in the Dept. of Corrections, is over 8 years behind in the building of the necessary inmate space. To have our tax dollars build what is required now and in the future will rob funding from other necessary government spending. While the idea of regional facilities, and the holding of local inmates, is a respectable solution, it will take some time to build and receive those communities approval.

The Powell County solution is simple and clean. Build a 500 bed facility in Deer Lodge without tax dollars, bring over 3 million tax dollars back to the State and employ Montanan's instead of Texan's. Long term costs of employees must not be ignored by the State. These Correctional Officers will be trained in conjunction with the MSP employees. Thus offering the State added support if needed. The Bobby Ross Group will mimic the employee wage and benefits that our State officers are receiving. They are not opposed to its' employees becoming unionized. A private managed prison also offers retired personnel from the Department of Corrections to embark on a second career instead of going out of state.

The Powell County Hospital is already a provider for the MSP inmates and will offer a contract to BRG. That will insure a continuum of health care.

Powell County Progress strongly recommends that you and your committee endorse the Powell County plan. We view this facility as an adjunct to the Montana State Prison and not a Regional facility. Overcrowding at the current facility is at a dangerous level. We can ease your burden with having our facility running in 12 months by a professional management team.

As we stated before "It just makes sense!"

Lee Jewell
President of Powell County Progress

Powell County
Republican
Central Committee
222 N. Main
Deer Lodge, MT 59722

February 12, 1997

Select Committee on Corrections
Capital Station
Helena, MT 59601

Chairman Bergsagel and Members of the Committee

The Powell County Republican Central Committee wishes to express support for a 500 bed men's prison facility in Deer Lodge as proposed by the Bobby Ross Group. Current overcrowding in the existing facility and projected increases in the prison population must be addressed. And this proposal fits the bill.

Deer Lodge has been home to the state's penal institution since the turn of the century. The community is used to having a prison in its midst and an expansion of the prison is not a cause for concern. Local institutions, organizations and businesses have developed a level of expertise in the needs and requirements of the prison which would be hard to duplicate elsewhere. Local law enforcement, the county justice system, the hospital and local vendors all have the capacity to address the needs of the new facility.

It is also the Powell County Republican Central Committee's belief that the proposal to build a private penal institution in Deer Lodge encompasses many of the core beliefs of the Republican Party: Reducing the size of government - this is a private enterprise; reducing cost of government - no state construction funds required; and privatization of government functions where it makes sense.

Respectfully submitted



Stephen J. Flynn, Chairman
Powell County Republican Central Committee



SILVER STATE POST

Box 111

Deer Lodge, MT 59722

(406) 846-2424

FAX (406) 846-2453

February 17, 1997

Select Committee on Corrections
Capitol Station
Helena, MT 59601

Dear Chairman Bergsagel and members of the committee:

I'm writing in support of building a county-owned, privately-operated 500 men's prison in Deer Lodge. I sit on the Department of Corrections Advisory Council and am very familiar with the problems facing the state in housing prisoners.

It's obvious that something must be done in the near future to alleviate the overcrowding at the present facility, to bring Montana's prisoners back from Texas, and to prepare for future needs. Given the present climate in the state against raising taxes, the prospect of building a state-owned facility or building more regional prisons doesn't seem feasible. I feel, as a taxpayer, that a county-owned, privately-managed facility is a very appropriate response to the problem. In addition, I feel Deer Lodge is the most logical location for such a facility.

First, and foremost, Deer Lodge is a prison town. As you know, it takes more than a plot of ground and political clout to host a prison. It takes a proud community willing to support the facility and its programs. The Montana State Prison has been a major part of Deer Lodge history since the 1800s. There are local families having two and three generations who have worked at the prison and they take great pride in that tradition. Similar pride and acceptance will be hard to establish in another community. I feel you will face great opposition from citizens in other areas who want the economic benefits of a prison in their town but don't want 'dangerous' inmates in their neighborhoods.

Second, by placing a privately-managed facility in Deer Lodge near MSP, corrections officials will better be able to maintain 'quality control' in housing, care and training programs for inmates. If an agreement can be made for a private prison to contract to use the laundry and kitchen facilities, then consistent quality care can be assured and per inmate daily costs could be kept near MSP's daily rate. Sharing services as well as training could be very beneficial and cost-saving to the state.

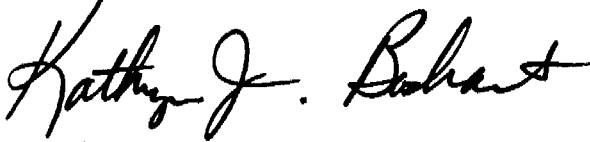
Montana State Prison is one of only a few prisons in the country that continues to house all levels of inmates, from minimum to maximum, within the same facility. That mix is potentially dangerous and hard to manage. I have always felt that building a second prison close to MSP to house only minimum security inmates was a good idea. That would turn the state's present

facility into a medium-maximum prison and provide for a much more efficient use of staff. I know that the present arrangement of maintaining all levels of security at MSP, coupled with inmates residing in Texas and hundreds of others waiting in county jails, has made management is a logistical nightmare.

I urge you to examine the situation closely and talk to those people who have lived with a prison literally on their Main Street. The citizens of Deer Lodge know what it takes to operate a prison. Please, listen to them.

Your decision should make good economic and social sense. Forget the politicians and the pressure from economic development groups. You need to decide what's the most economical for the state and what's best for the inmates.

Thank you for your consideration,

A handwritten signature in black ink, reading "Kathryn J. Boshart". The signature is written in a cursive, flowing style with a large initial 'K'.

Kathryn Boshart
Editor/Publisher
Silver State Post

February 13, 1997

TO: Steering Committee on Corrections

FROM: Tom Cotton

RE: Support of Private Prison in Deer Lodge

This letter is to support the interest to build a privately run prison in the Deer Lodge Valley. Given the current situation at the State Prison, it is apparent that additional facilities will be needed to house the influx of new prisoners. The choice appears to be between the state providing the resources or allowing private investors the opportunity to build these facilities. In a time when the state is struggling to provide needed services for all Montanans it seems reasonable to head in the direction of privatization of our prisons. As a resident of Deer Lodge I find there are many positives to this proposal and very few negatives. Let's begin the process of developing a system that will deal with this problem once and for all without draining all of our state resources.

Tom Cotton

R.F. LABBE, Mayor

KERMIT DANIELS
City Attorney

BARBARA P. McOMBER, CLERK
DIXIE HENDERSON, Treasurer

CITY OF DEER LODGE

300 MAIN
DEER LODGE, MT 59722-1098
(406) 846-3649
(406) 846-2238

MAURICE R. SIVERTSON
LYLE E. GILLETTE, JR.
JOHN J. MOLENDYKE
HELEN G. GILL
FRANCES B. HELTON
GARY W. CHILCOTT
JIMMY RAY ANDERSON
EUGENE L. HURLBERT

February 11, 1997

Select Committee on Corrections
Capitol Station
Helena, Mt. 59601

Dear Chairman Bergsagel and Member of the Committee:

As Mayor of the City of Deer Lodge, I am writing this letter to request your support to construct a Private Prison in Deer Lodge.

Deer Lodge is a prison town and has been since the turn of the century. We have grown to cope with problems facing Prison-City as they occur. I feel the City of Deer Lodge has very good rapport with the Department of Corrections and Prison in general.

The labor pool from this area, Butte-Anaconda and Deer Lodge has proven to be more than adequate.

The projections for the future are scary. The Prison System needs help now. It is truly a shame to see millions of Montana tax dollars going to Texas when they could stay in Montana.

The local Hospital is already providing health care for the Prison and can handle the increase without a problem.

I have met with the Powell County Sheriff's Department and since the City and County consolidated Police forces they feel they can handle any problems that might arise and have adequate manpower to do the job.

This facility can be built without cost to the State and the vendors that service the State Prison have assured us that they can handle any increase without a problem.

Now is the time to act to help solve one of the biggest problems facing the state. Let us build a private Prison in Deer Lodge.

Sincerely,



R.F. LABBE,
Mayor

RFL/dh



Powell County Memorial Hospital

1101 Texas Avenue • Deer Lodge, Montana 59722

Phone (406) 846-2212 • FAX (406) 846-3074

February 11, 1996

To whom it may concern:

Please accept this as a letter of support for the proposed privately managed, Powell County owned, 500 bed men's prison to be located in the Deer Lodge valley.

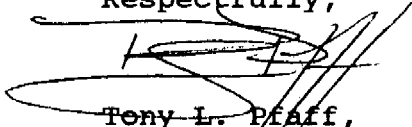
Powell County Memorial Hospital (PCMH) currently provides all physician and mid-level health care to the population at Montana State Prison (MSP). Also, PCMH has provided on-site management for the infirmary at MSP Since December 1, 1994.

PCMH and the Montana Department of Corrections are in the process of negotiating for the complete privatization of the infirmary. The contract, if successful, will call for full risk, managed care contract. The contract will not only help stabilize the health care in Deer Lodge, the State of Montana should realize a significant savings in the cost of providing health care to the inmates of MSP.

PCMH welcomes the opportunity to serve the health care needs of a private institution. Over the last four years we have developed many of the systems that are necessary to provide high quality, low cost care to a very unique population in a rural community. We believe that our expertise in rural correctional medicine will aid in the success of a private prison in the Deer Lodge valley.

Please feel free to contact me if you have any questions or comments.

Respectfully,



Tony L. Pfaff,
Chief Executive Officer

HOUSE OF REPRESENTATIVES

House Select COMMITTEE ON CORRECTIONS

ROLL CALL

DATE 2/20/97

[illegible]

MONTANA HOUSE OF REPRESENTATIVES SELECT COMMITTEE ON CORRECTIONS VISITOR REGISTER

DATE: 2/20/97

PRESENTATION:

BILL NUMBER: HB 83

SPONSOR: Bexasage

Please indicate your position below:

PROPOSER (P)

OPPOSER (O)

INFORMATIONAL (I)

PLEASE PRINT

PLEASE
CIRCLE

NAME

ADDRESS

REPRESENTING

P O I	SCOTT F. HOWARD	313 4TH DEER LODGE	SHERIFF POWELL CO.
P O I	SCOTT CHART	Blgs	ACLU
P O I	MIKE NOELLEN	1410 S. SELIGER	Lee News Papers of Mont
P O I	BETTY WADDELL	311 POWER	MT ASSOC. OF CHURCHES
P O I	RILEY JOHNSON	WACHENHUT CORP	
P O I	CHARLES R. JOHNS	PALM BEACH GARDEN, FL	WACHENHUT CORP
P O I	LEIGH SMITH	HB - 56 -	Deer Lodge
P O I			
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PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY.

WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

h:\data\wp\visitor.frm

MOTION: REP. JOHNSON MOVED HB 544 AS AMENDED.

{Tape: 4; Side: A; Approx. Time Count: 7.3.}

DISCUSSION

MOTION: SEN CHRISTIAENS MOVED A CONCEPTUAL AMENDMENT WHICH WOULD PREVENT OUT OF STATE INMATES FROM BEING ACCEPTED IN REGIONAL JAILS.

{Tape: 4; Side: A; Approx. Time Count: 14.8.}

DISCUSSION

VOTE: Motion failed 3-9 with REP. WYATT, SEN. CHRISTIAENS and CHAIRMAN BERGSAGEL voting yes.

{Tape: 4; Side: A; Approx. Time Count: 19.6.}

VOTE: (HB 544 AS AMENDED) Motion passed 8-4 with REP. KASTEN, REP. McCANN, REP. VICK and REP. WYATT voting no.

{Tape: 4; Side: A; Approx. Time Count: 21.3.}

HB 83

MOTION: SEN. SWYSGOOD MOVED HB 83 DO PASS.

{Tape: 4; Side: A; Approx. Time Count: 22.7.}

DISCUSSION

**EXPLANATION OF AMENDMENTS
(MIKE WINGARD)**

EXHIBITS 7 - 9

MOTION: REP. McGEE MOVED AMENDMENTS 8302.

{Tape: 4; Side: B; Approx. Time Count: 12.6.}

DISCUSSION

SUBSTITUTE MOTION: REP. JOHNSON MOVED A CONCEPTUAL AMENDMENT TO ENSURE CONTRACT LENGTHS ARE CONSISTENT WITH HB 544. Motion carried 8-4 with REP. WYATT, REP. VICK, REP. McGEE and REP. KASTEN voting no.

{Tape: 4; Side: B; Approx. Time Count: 17.0.}

VOTE: (AMENDMENTS 8302) Motion carried unanimously.

{Tape: 4; Side: B; Approx. Time Count: 17.6.}

MOTION: REP. McGEE MOVED HB 83 AS AMENDED.

{Tape: 4; Side: B; Approx. Time Count: 17.7.}

DISCUSSION

MOTION: REP. JOHNSON MOVED TO STRIKE PAGE 2, LINES 3 AND 4 OF THE BILL.

{Tape: 4; Side: B; Approx. Time Count: 18.2.}

DISCUSSION

VOTE: Motion carried 7-5 with SEN. CHRISTIAENS, REP. WYATT, REP. VICK, REP. MCGEE and CHAIRMAN BERGSAGEL voting no.
{Tape: 4; Side: B; Approx. Time Count: 19.9.}

MOTION: SEN. CHRISTIAENS MOVED AN AMENDMENT TO THE BILL THAT MEMBERS OF THE BLACKFEET NATION BE ALLOWED THE OPPORTUNITY TO PARTICIPATE IN HOUSING OF NATIVE AMERICAN OFFENDERS ON THE BLACKFEET RESERVATION.
{Tape: 4; Side: B; Approx. Time Count: 20.4.}

DISCUSSION

VOTE: Motion failed 5-7 with SEN. GAGE, REP. WYATT, SEN. CHRISTIAENS, REP. VICK and REP. JOHNSON voting yes.
{Tape: 4; Side: B; Approx. Time Count: 25.4.}

MOTION/VOTE: REP. MCGEE MOVED HB 83 AS AMENDED. MOTION CARRIED 11-1 with REP. WYATT voting no.
{Tape: 4; Side: B; Approx. Time Count: 26.1.}

HB 272

MOTION: REP. MCGEE MOVED TO RECONSIDER HB 272.
{Tape: 4; Side: B; Approx. Time Count: 26.6.}

DISCUSSION

VOTE: Motion failed 6-6 with REP. FELAND, REP. KASTEN, REP. WYATT, SEN. GAGE, SEN. SWYSGOOD and SEN. CHRISTIAENS voting no.
{Tape: 5; Side: A; Approx. Time Count: 8.5.}

HB 261

MOTION: REP. FELAND MOVED TO RECONSIDER HB 261.
{Tape: 5; Side: A; Approx. Time Count: 9.8.}

DISCUSSION

VOTE: Motion failed 6-6 with REP. JOHNSON, REP. KASTEN, REP. WYATT, SEN. SWYSGOOD, SEN. CHRISTIAENS, and CHAIRMAN BERGSAGEL voting no.
{Tape: 5; Side: A; Approx. Time Count: 15.3.}

EXHIBIT 7
DATE 3/10/97
HB 83

Amendments to House Bill No. 83
First Reading Copy

Requested by Representative Bergsagel
For the Committee on Corrections

Prepared by Greg Petesch
March 10, 1997

1. Title, line 6.

Following: " ; "

Insert: "PROVIDING FOR AGREEMENTS WITH TRIBAL GOVERNMENTS ; "

2. Page 1, line 30.

Strike: "An"

Insert: "Except as provided in [section 6], an"

3. Page 3, line 3.

Insert: "NEW SECTION. Section 6. Agreements with tribal governments. The department may enter into agreements with a tribal government for the confinement of offenders who are enrolled members or are recognized as members of that tribal government's tribe. The agreements must provide that the confinement is in a prison setting and is governed by Title 46, chapter 19, part 3 or 4."

Renumber: subsequent sections

4. Page 3, line 4.

Strike: "5"

Insert: "6"

EXHIBIT 8

DATE 3/6/97

HB 83

Amendments to House Bill No. 83
First Reading Copy

Requested by Representative Bergsagel
For the Committee on Corrections

Prepared by Greg Petesch
March 10, 1997

1. Title, line 6.

Following: "FACILITIES;"

Insert: "SPECIFYING THE DEPARTMENT OF CORRECTIONS DUTIES AND RESPONSIBILITIES; SPECIFYING THE DUTIES NOT DELEGABLE TO A CONTRACTOR; SPECIFYING THE REQUIREMENTS OF REQUESTS FOR PROPOSALS; SPECIFYING CERTAIN REQUIREMENTS OF CONTRACTS; SPECIFYING CONTRACTOR RESPONSIBILITY FOR CERTAIN COSTS; PROVIDING FOR LICENSURE OF FACILITIES; SPECIFYING ACTION BY THE DEPARTMENT FOR CONTRACTOR FAILURE TO COMPLY WITH LAW OR TO RENEW CONTRACT;"

Following: "DATE"

Insert: "AND AN APPLICABILITY DATE"

2. Page 1, line 23.

Strike: "5"

Insert: "13"

3. Page 2, line 2.

Following: "department."

Insert: "A license is nontransferable."

4. Page 2.

Following: line 4

Insert: "

NEW SECTION. Section 4. Department duties and responsibilities -- rulemaking authority. (1)(a) The department shall adopt rules that require the private correctional facility to be an accredited correctional facility or to achieve accreditation within 3 years from the date that the facility begins operation.

(b) The rules must provide for review and approval of facility design and construction by the department of administration.

(2) The department shall at least annually inspect each private correctional facility to determine compliance with [sections 1 through 13], regulations, contract requirements, and department rules.

(3) The department shall present a biennial report of compliance inspections to the legislature.

NEW SECTION. Section 5. Requirements of request for proposals. (1) The request for proposals must include and identify the services requested and required and other information, including but not limited to:

- (a) the physical plant, facility, and perimeter;
- (i) the facility capacity and inmate population, including classification levels accepted;
- (ii) inmate housing; and
- (iii) security, safety, and emergency procedures.
- (b) who is responsible for transportation of inmates:
 - (i) among facilities;
 - (ii) upon an inmate's release, including discharge or parole;
 - (iii) for court and administrative proceedings such as parole hearings and inmate participation as a witness;
 - (iv) for medical transportation; and
 - (v) security.
- (c) administration of the facility, including but not limited to:
 - (i) the organizational structure and staffing; and
 - (ii) a policy and procedures manual addressing:
 - (A) inmate discipline;
 - (B) incident reporting;
 - (C) grievance procedures;
 - (D) searches;
 - (E) drug testing;
 - (F) monitoring of facility standards; and
 - (G) the retention and maintenance of inmate and facility records by the private correctional facility.
 - (d) staffing issues regarding:
 - (i) management;
 - (ii) security;
 - (iii) administrative personnel;
 - (iv) qualifications and requirements;
 - (v) training;
 - (vi) staff to inmate ratios;
 - (e) inmate needs such as food, clothing, sanitation, hygiene, and laundry;
 - (f) programs and services to be required such as vocational and educational training, religious services or customs, counseling, recreation, and canteen;
 - (g) medical, dental, optical, pharmaceutical, psychological, and other medical-related care;
 - (h) insurance requirements;
 - (i) indemnification;
 - (j) performance bonds;
 - (k) a requirement that proposers provide evidence or documentation demonstrating an ability to provide the services; to comply with acceptable services; and to comply with the rules, regulations, and contract requirements;
 - (l) a requirement that proposers provide documentation of financial stability or security; and
 - (m) monitoring of facility operations.
- (2) The department may release separate requests for proposals or contracts for specific services such as transportation of inmates and medical, dental, vision, and sick call services. Each contract must include a detailed explanation of the services that must be provided.
- (3) The department shall maintain a list of qualified

applicants and all proposal responses. The department shall retain all records related to the evaluation process and the awarding of a contract."

Renumber: subsequent sections

5. Page 2, line 6.

Strike: "-- rules"

Strike: "(a)"

6. Page 2, line 8.

Strike: "5"

Insert: "13"

7. Page 2, lines 9 through 12.

Strike: subsection (b) in its entirety

Insert: "(2) The department may grant a temporary license for 1 year to a facility that loses accreditation if the department determines that the facility is making satisfactory progress toward substantial conformity with [sections 1 through 13], American correctional association guidelines, department rules, and contract requirements and that the interests and well-being of the residents of the state and of the persons to be confined in the facility are protected. A temporary license may not be renewed.

(3) Except as provided in subsection (2), the department may not grant a license unless the contractor conforms to all state and federal statutes, American correctional association guidelines, department rules, and other requirements as defined in administrative rule."

8. Page 2, line 13.

Strike: "(c)"

Insert: "(4) Upon request of the legislative audit committee, the legislative audit division shall review each contract prior to execution to determine if the contract addresses legislative intent and includes the requirements imposed by [sections 1 through 13]. The legislative audit division shall provide their findings to the department."

9. Page 2, line 14.

Following: "state."

Insert: "The department shall take into consideration the legislative audit division findings in its determination."

10. Page 2, line 15.

Strike: "(d)"

Insert: "(5)"

11. Page 2.

Following: line 17

Insert: "(6) The department may not grant a license to a private correctional facility unless the facility provides clear evidence of support from the residents of the county in which the facility is to be located.

(7) The department may not grant a license to a private

correctional facility unless the facility has promulgated a policy to provide reasonable access to the facility by representatives of the public media.

(8) The department may not grant a license to a private correctional facility unless the facility has entered into an agreement with local and state law enforcement authorities. The private correctional facility must demonstrate an adequate response for the mutual aid, assistance, and notification in the event of an escape, natural or human-caused disaster, riot, or other act that may potentially affect public safety.

(9) The department may not grant a license to a private correctional facility unless the legislature has appropriated funds for the housing of state inmates in private correctional facilities."

Renumber: subsequent subsections

12. Page 2, lines 18 through 21.

Strike: subsection (2) in its entirety

Renumber: subsequent subsection

13. Page 2, line 23.

Strike: "5"

Insert: "13"

14. Page 2.

Following: line 23

Insert: "

NEW SECTION. Section 7. Licensure limitations -- siting of private correctional facilities. (1) The department may not grant a license to a private correctional facility located within 2 miles of a public or nonpublic school, not including a home school. However, if a public or nonpublic school is established after a facility has been approved, the department may not prevent the private correctional facility from operating because of this subsection (1).

(2) The department may not grant a license to a private correctional facility unless there has been a public hearing in the county in which the private correctional facility is to be located and unless the county commissioners approve the location of the private correctional facility by a majority vote.

(3) If the siting of a private correctional facility is proposed within 10 miles of an adjacent county or if the department determines that there are reasonable expectations that the siting may have an impact on an adjacent county, the department may not grant a license to a private correctional facility unless there has been a public hearing in the adjacent county and unless the county commissioners of the adjacent county approve the location of the private correctional facility by a majority vote.

NEW SECTION. Section 8. Licensure limitations -- construction requirements. (1) The department may not grant a license to a private correctional facility unless the design meets long-term correctional needs, goals, and objectives as determined by the department.

(2) The department may not grant a license to a private correctional facility unless the facility is constructed in accordance with American correctional association facility construction requirements. In addition, the private correctional facility must comply with any other local, state, or federal laws or regulations.

(3) The department may not grant a license unless the department and the department of administration have reviewed and approved the design and construction of the private correctional facility.

NEW SECTION. Section 9. Contracts with private correctional facilities. (1) A contract with a private correctional facility must be awarded to the contractor who best meets the needs of the state and the department and demonstrates the capability of providing services requested.

(2) A contract must specify the type and level of services to be provided by the contractor. The department shall place requirements in the contract that require the private contractor to allow the department to review and approve:

(a) choose the correctional facility to which an inmate is initially or subsequently assigned. A contractor may request the department to transfer an inmate to a state facility or to another private facility.

(b) develop or adopt disciplinary rules that differ from the disciplinary rules, penalties, and policies of the department;

(c) make a decision that affects the sentence imposed on an inmate or the time served by an inmate;

(d) make recommendations to the board of pardons and parole with respect to the denial or granting of parole or release, except to submit reports to the board of pardons and parole and to respond to requests by the department or the board of pardons and parole;

(e) develop or implement requirements that inmates engage in any type of work, except to the extent that those requirements are accepted by the department;

(f) determine inmate eligibility for any form of release from a correctional facility; or

(g) develop or use a classification system other than the classification system used by the department.

(3) Contracts are limited to not more than 10 years in length. However, a contract may contain two 10-year renewal options that are conditioned upon satisfactory compliance with the contract requirements. The contract must include a definition of unsatisfactory contract compliance that is jointly determined by the department and the contractor. The contract must specify the remedies and timeframes for remediation of any noted noncompliance issues. The department shall indicate contract compliance status as part of the biennial report to the legislature.

(4) The contract must specify that the private correctional facility shall grant access to the legislative audit division or a person contracting with the legislative audit division for compliance auditing. The contractor shall provide access to all

areas of the facility and to all records maintained onsite or offsite that pertain to all aspects of the facility, including but not limited to operation, financial, and inmate records.

NEW SECTION. Section 10. Contractor costs responsibility.

(1) The private correctional facility is responsible for all monitoring costs incurred by the state.

(2) The contractor is responsible for costs incurred by the state or any political subdivision for legal costs relating to escapes, riots or disturbances, or other natural or human-caused events that occur at the facility.

(3) The contractor is responsible for all reasonable costs and expenses incurred by the state or a political subdivision brought by or on behalf of an inmate while an inmate is incarcerated at a private correctional facility.

NEW SECTION. Section 11. Qualifications of correctional officers. (1) Correctional officers and supervisors of a private correctional facility shall have successfully completed, or shall complete within 6 months, the state's basic correctional officer training program or a comparable program offered by an accredited institution approved by the department.

(2) Correctional officers and supervisors shall complete continuing education requirements as required by the Montana correctional system for officers and supervisors.

(3) Correctional officers may not be employed if previously convicted of a felony offense.

(4) A correctional officer may not carry a firearm or other weapon in the performance of the correctional officer's duties unless the correctional officer has completed a department-approved weapons training course or is in compliance with standards developed or adopted by the department.

NEW SECTION. Section 12. Restrictions on inmate movements. An inmate may not leave the secure premises of a private correctional facility except to comply with a court order, to receive medical care that is not available at the private correctional facility, or as part of a work program without the express written approval of the department. Any movement of an inmate outside of the secure premises of the private correctional facility must be in compliance with approved policies and procedures established by the department."
Renumber: subsequent sections

15. Page 2, line 25.

Following: "**department.**"

Insert: "(1) A contractor shall remain in strict compliance with [sections 1 through 13], established American correctional association guidelines, department rules, and contract requirements.

(2)"

16. Page 2, line 26.

Strike: "5"

Insert: "13"

17. Page 2, line 28.
Following: "within a"
Strike: "reasonable"
Insert: "specified"

18. Page 2, line 29.
Following: the first "time"
Insert: "not to exceed 1 year"

19. Page 3, line 1.
Strike: "5"
Insert: "13"

20. Page 3, line 3.
Insert: " (3) If a private correctional facility fails to comply with [sections 1 through 13], department rules, or contract requirements within the specified time period, the state may assume control of the facility for the purpose of protecting the inmates, facility staff, or the public. If the state assumes control of the facility, the department shall suspend payment for any services, and the department assumes the costs of assuming control.

(4) The department may assume emergency control of a private correctional facility if substantial violations exist that affect the life, health, or safety of the inmates, facility employees, or the public or that otherwise substantially impact the security of the private correctional facility.

(5) In the event that a contractor fails to comply with [sections 1 through 13], department rule, or contract requirements, the state may retain the option of purchasing or leasing the facility.

(6) If either the state or the contractor fails to renew a contract, the state may retain the option of purchasing or leasing the facility.

(7) If the state retains the option of purchasing or leasing the facility under subsections (5) and (6) of this section, because it requires the creation of state debt, the appropriation bill that funds the purchase of services from the facility must be treated in the same manner as a bill creating state debt and requires a vote of two-thirds of the members of each house of the legislature for passage."

21. Page 3, line 4.
Strike: "5"
Insert: "13"

22. Page 3.
Following: line 5
Insert: "

NEW SECTION. **Section 15. Applicability.** (1) [This act] applies to proceedings begun or contracts renewed on or after [the effective date of this act].

(2) [Section 7] does not apply to a private correctional facility that has been established or proposed prior to [the effective date of this act]."

Renumber: subsequent section

Amendments to House Bill No. 83
First Reading Copy

EXHIBIT 9
DATE 3/10/97
HB 83

Requested by Representatives McGee and Wyatt
For the Committee on Corrections

Prepared by Susan Byorth Fox
February 10, 1997 - edited version

1. Title, line 6.

Following: "FACILITIES;"

Insert: "SPECIFYING THE DEPARTMENT OF CORRECTIONS DUTIES AND RESPONSIBILITIES; SPECIFYING THE DUTIES NOT DELEGABLE TO A CONTRACTOR; SPECIFYING THE REQUIREMENTS OF REQUESTS FOR PROPOSALS; SPECIFYING CERTAIN REQUIREMENTS OF CONTRACTS; SPECIFYING CONTRACTOR RESPONSIBILITY FOR CERTAIN COSTS; PROVIDING FOR LICENSURE OF FACILITIES; SPECIFYING ACTION BY THE DEPARTMENT FOR CONTRACTOR FAILURE TO COMPLY WITH LAW OR TO RENEW CONTRACT;"

Following: "DATE"

Insert: "AND AN APPLICABILITY DATE"

2. Page 1, line 23.

Strike: "5"

Insert: "14"

3. Page 1, line 27.

Strike: "or"

Insert: ", "

Following: "operated"

Insert: ", or owned and operated by a local governmental entity"

4. Page 2, line 2.

Following: "department."

Insert: "A license is nontransferable."

5. Page 2.

Following: line 4

Insert: "

NEW SECTION. Section 4. Department duties and responsibilities -- rulemaking authority. (1) The department shall adopt rules including minimum standards for the location, construction, operation, and physical condition of private correctional facilities and for the security, safety, health, treatment, and discipline of persons confined in them.

(a) The rules must require the private correctional facility to be an accredited correctional facility or to achieve accreditation within 1 year from the date of issuance of a license.

(b) The rules must provide for review and approval of facility design and construction by the department of administration.

(2) The department shall at least annually inspect each private correctional facility to determine compliance with [sections 1 through 14], regulations, contract requirements, and

department rules.

(3) The department shall present a biennial report of compliance inspections to the legislature.

NEW SECTION. Section 5. Powers and duties not delegable to contractor. An executed contract may not be construed to authorize or delegate authority to the contractor to:

(1) choose the correctional facility to which an inmate is initially or subsequently assigned. A contractor may request the department to transfer an inmate to a state facility or to another private facility.

(2) develop or adopt disciplinary rules that differ from the disciplinary rules, penalties, and policies of the department;

(3) make a final determination on the disciplinary action that affects the liberty of an inmate. The contractor may remove an inmate from the general population in the event of an emergency, before final resolution of a disciplinary hearing, or at an inmate's request for assigned housing in protective custody.

(4) make a decision that affects the sentence imposed on an inmate or the time served by an inmate;

(5) make recommendations to the board of pardons and parole with respect to the denial or granting of parole or release, except to submit reports to the board of pardons and parole and to respond to requests by the department or the board of pardons and parole;

(6) develop or implement requirements that inmates engage in any type of work, except to the extent that those requirements are accepted by the department;

(7) determine inmate eligibility for any form of release from a correctional facility; or

(8) develop or use a classification system other than the classification system used by the department.

NEW SECTION. Section 6. Requirements of request for proposals. (1) The request for proposals must include and identify the services requested and required and other information, including but not limited to:

(a) the physical plant, facility, and perimeter;

(i) the facility capacity and inmate population, including classification levels accepted;

(ii) inmate housing; and

(iii) security, safety, and emergency procedures.

(b) who is responsible for transportation of inmates:

(i) among facilities;

(ii) upon an inmate's release, including discharge or parole;

(iii) for court and administrative proceedings such as parole hearings and inmate participation as a witness;

(iv) for medical transportation; and

(v) security.

(c) administration of the facility, including but not limited to:

(i) the organizational structure and staffing; and

- (ii) a policy and procedures manual addressing:
 - (A) inmate discipline;
 - (B) incident reporting;
 - (C) grievance procedures;
 - (D) searches;
 - (E) drug testing;
 - (F) monitoring of facility standards; and
 - (G) the retention and maintenance of inmate and facility records by the private correctional facility.
- (d) staffing issues regarding:
 - (i) management;
 - (ii) security;
 - (iii) administrative personnel;
 - (iv) qualifications and requirements;
 - (v) training;
 - (vi) staff to inmate ratios;
- (e) inmate needs such as food, clothing, sanitation, hygiene, and laundry;
- (f) programs and services to be required such as vocational and educational training, religious services or customs, counseling, recreation, and canteen;
- (g) medical, dental, optical, pharmaceutical, psychological, and other medical-related care;
- (h) insurance requirements;
- (i) indemnification;
- (j) performance bonds;
- (k) a requirement that proposers provide evidence or documentation demonstrating an ability to provide the services; to comply with acceptable services; and to comply with the rules, regulations, and contract requirements;
- (l) a requirement that proposers provide documentation of financial stability or security; and
- (m) monitoring of facility operations.
- (2) The department may release separate requests for proposals or contracts for specific services such as transportation of inmates and medical, dental, vision, and sick call services. Each contract must include a detailed explanation of the services that must be provided.
- (3) The department shall maintain a list of qualified applicants and all proposal responses. The department shall retain all records related to the evaluation process and the awarding of a contract."

Renumber: subsequent sections

6. Page 2, line 6.
 Strike: "-- rules"
 Strike: "(a)"

7. Page 2, line 8.
 Strike: "5"
 Insert: "14"

8. Page 2, lines 9 through 12.
 Strike: subsection (b) in its entirety
 Insert: "(2) The department may grant a temporary license for 1

year to a facility that does not conform to the requirements if the department determines that the facility is making satisfactory progress toward substantial conformity with [sections 1 through 14], American correctional association guidelines, department rules, and contract requirements and that the interests and well-being of the residents of the state and of the persons to be confined in the facility are protected. A temporary license may not be renewed.

(3) Except as provided in subsection (2), the department may not grant a license unless the contractor conforms to all state and federal statutes, American correctional association guidelines, department rules, and other requirements as defined in administrative rule."

9. Page 2, line 13.

Strike: "(c)"

Insert: "(4) The legislative audit division shall review each contract prior to execution to ensure that the contract addresses legislative intent and includes the requirements imposed by [sections 1 through 14]. The legislative audit division shall evaluate the costs and benefits of entering into the contract compared to traditional state efforts."

10. Page 2, line 14.

Following: "state."

Insert: "The department shall take into consideration the legislative audit division findings in its determination."

11. Page 2, line 15.

Strike: "(d)"

Insert: "(5)"

12. Page 2.

Following: line 17

Insert: "(6) The department may not grant a license to a private correctional facility unless the facility provides clear evidence of support from the residents of the county in which the facility is to be located.

(7) The department may not grant a license to a private correctional facility unless the facility has promulgated a policy to provide reasonable access to the facility by representatives of the public media.

(8) The department may not grant a license to a private correctional facility unless the facility has entered into an agreement with local and state law enforcement authorities. The private correctional facility must demonstrate an adequate response for the mutual aid, assistance, and notification in the event of an escape, natural or human-caused disaster, riot, or other act that may potentially affect public safety.

(9) The department may not grant a license to a private correctional facility unless the legislature has appropriated funds for the housing of state inmates in private correctional facilities."

Renumber: subsequent subsections

13. Page 2, lines 18 through 21.
Strike: subsection (2) in its entirety
Renumber: subsequent subsection

14. Page 2, line 23.
Strike: "5"
Insert: "14"

15. Page 2.
Following: line 23
Insert: "

NEW SECTION. Section 8. Licensure limitations -- siting of private correctional facilities. (1) The department may not grant a license to a private correctional facility located within 2 miles of a public or nonpublic school, not including a home school. However, if a public or nonpublic school is established after a facility has been approved, the department may not prevent the private correctional facility from operating because of this subsection (1).

(2) The department may not grant a license to a private correctional facility unless there has been a public hearing in the county in which the private correctional facility is to be located and unless the county commissioners approve the location of the private correctional facility by a majority vote.

(3) If the siting of a private correctional facility is proposed within 10 miles of an adjacent county or if the department determines that there are reasonable expectations that the siting may have an impact on an adjacent county, the department may not grant a license to a private correctional facility unless there has been a public hearing in the adjacent county and unless the county commissioners of the adjacent county approve the location of the private correctional facility by a majority vote.

NEW SECTION. Section 9. Licensure limitations -- construction requirements. (1) The department may not grant a license to a private correctional facility unless the design meets long-term correctional needs, goals, and objectives as determined by the department.

(2) The department may not grant a license to a private correctional facility unless the facility is constructed in accordance with American correctional association facility construction requirements. In addition, the private correctional facility must comply with any other local, state, or federal laws or regulations.

(3) The department may not grant a license unless the department and the department of administration have reviewed and approved the design and construction of the private correctional facility.

NEW SECTION. Section 10. Contracts with private correctional facilities. (1) A contract with a private correctional facility must be awarded to the contractor who best meets the needs of the state and the department and demonstrates the capability of providing services requested.

(2) A contract must specify the type and level of services to be provided by the contractor.

(3) Contracts are limited to not more than 2 years in length.

(4) The contract must specify that the private correctional facility shall grant access to the legislative audit division or a person contracting with the legislative audit division for compliance auditing. The contractor shall provide access to all areas of the facility and to all records maintained onsite or offsite that pertain to all aspects of the facility, including but not limited to operation, financial, and inmate records.

NEW SECTION. Section 11. Contractor costs responsibility.

(1) The private correctional facility is responsible for all monitoring costs incurred by the state.

(2) The contractor is responsible for costs incurred by the state or any political subdivision relating to escapes, riots or disturbances, or other natural or human-caused events that occur at the facility.

(3) The contractor is responsible for all reasonable costs and expenses incurred by the state or a political subdivision brought by or on behalf of an inmate while an inmate is incarcerated at a private correctional facility.

NEW SECTION. Section 12. Qualifications of correctional officers. (1) Correctional officers and supervisors of a private correctional facility shall have successfully completed, or shall complete within 6 months, the state's basic correctional officer training program or a comparable program offered by an accredited institution approved by the department.

(2) Correctional officers and supervisors shall complete continuing education requirements as required by the Montana correctional system for officers and supervisors.

(3) Correctional officers may not be employed if previously convicted of a felony offense.

(4) A correctional officer may not carry a firearm or other weapon in the performance of the correctional officer's duties unless the correctional officer has completed a department-approved weapons training course or is in compliance with standards developed or adopted by the department.

NEW SECTION. Section 13. Restrictions on inmate movements. An inmate may not leave the secure premises of a private correctional facility except to comply with a court order, to receive medical care that is not available at the private correctional facility, or as part of a work program without the express written approval of the department. Any movement of an inmate outside of the secure premises of the private correctional facility must be in compliance with approved policies and procedures established by the department."

Renumber: subsequent sections

16. Page 2, line 25.

Following: "department."

Insert: "(1) A contractor shall remain in strict compliance with

[sections 1 through 14], established American correctional association guidelines, department rules, and contract requirements.
(2) "

17. Page 2, line 26.

Strike: "5"

Insert: "14"

18. Page 2, line 28.

Following: "within a"

Strike: "reasonable"

Insert: "specified"

19. Page 2, line 29.

Following: the first "time"

Insert: "not to exceed 1 year"

20. Page 3, line 1.

Strike: "5"

Insert: "14"

21. Page 3, line 3.

Insert: " (3) If a private correctional facility fails to comply with [sections 1 through 14], department rules, or contract requirements within the specified time period, the state may assume control of the facility for the purpose of protecting the inmates, facility staff, or the public. If the state assumes control of the facility, the department shall suspend payment for any services, and the department assumes the costs of assuming control.

(4) The department may assume emergency control of a private correctional facility if substantial violations exist that affect the life, health, or safety of the inmates, facility employees, or the public or that otherwise substantially impact the security of the private correctional facility.

(5) In the event that a contractor fails to comply with [sections 1 through 14], department rule, or contract requirements, the state may retain the option of purchasing or leasing the facility.

(6) If either the state or the contractor fails to renew a contract, the state may retain the option of purchasing or leasing the facility.

(7) If the state retains the option of purchasing or leasing the facility under subsections (5) and (6) of this section, because it requires the creation of state debt, the appropriation bill that funds the purchase of services from the facility must be treated in the same manner as a bill creating state debt and requires a vote of two-thirds of the members of each house of the legislature for passage."

22. Page 3, line 4.

Strike: "5"

Insert: "14"

23. Page 3.

Following: line 5

Insert: "

NEW SECTION. Section 16. Applicability. [This act]
applies to proceedings begun or contracts renewed on or after
[the effective date of this act]."

Renumber: subsequent section

HEARING ON HB 83

Sponsor: REP. ERNEST BERGSAGEL, HD 95, MALTA

Proponents: Rick Day, Department of Corrections
Bob Anderson, Department of Corrections
Mike Voeller, Lee Newspapers of Montana
Ward Shanahan, Powell County Progress and the Bobby
Ross Group

Opponents: Betty Waddell, Montana Association of Churches
Sharon Hoff, Montana Catholic Conference
Scott Crichton, American Civil Liberties Union

Opening Statement by Sponsor:

REP. ERNEST BERGSAGEL, HD 95, MALTA There is no provision within Montana law that restricts the importation or construction of private prisons in the state. HB 83 is an attempt to regulate and provide those types of restrictions to insure the safety of our general population. Significant amendments were placed on this bill by the Select Committee and the same provision on out-of-state inmates is in this bill as in HB 544.

{Tape: 1; Side: B; Approx. Time Count: 8:27; Comments: None.}

Proponents' Testimony:

Rick Day, Department of Corrections I am here on behalf of the department and Governor Racicot in support of HB 83. HB 83 provides the legislature with the vehicle to decide whether a private corrections firm should be permitted to operate corrections within the State of Montana. We are aware that private corrections corporations provide effective services in other states within defined roles, parameters and the plans of that state. HB 83 prohibits the commercial importation of inmates from other states. It requires that such a facility must fit into the state and department long range goals and plans and provides for public participation in the deciding process. Corrections is not a business and our bottom line must always be public safety. However, private business can contribute and should be allowed to play a role in correction services in the State of Montana. The department's budget request provides for contracted prison space, up to 500 inmates at the end of the biennium. HB 83 serves as the legal framework to support the departments request.

Bob Anderson, Department of Corrections Amendments handed out and explained. (EXHIBIT #4)

Mike Voeller, Lee Newspapers of Montana We support this bill and have a vested interest in it as regards access of the news media to private citizens. It has been very difficult for the news media to access inmates in the private prison facility in Texas.

We requested an amendment to address this problem. We support this bill as amended.

Ward Shanahan, Powell County Progress and the Bobby Ross Group
We support HB 83.

{Tape: 2; Side: A; Approx. Time Count: 8:36; Comments: None.}

Opponents' Testimony:

Betty Waddell, Montana Association of Churches Our concern is with giving our primary responsibility, the power to imprison, to a for-profit group. The private prison companies don't talk about rehabilitation which is one of our primary concerns. When we talk about public safety we need to know that they are able to readjust to society and become better citizens. We feel private, for-profit prisons will not have this concern and that the recidivism rate will be higher than it is now. I urge you to modify this bill to make sure prisoners are being rehabilitated.

Sharon Hoff, Montana Catholic Conference We believe privatizing prisons is bad public policy. We don't think the state should contract fundamental rights, prisons are created for the good of society, not the good of the corporation. We are concerned with how fast this is moving and whether or not all the implications of privatizing our system have been researched and checked out. (EXHIBIT #4A) handed out.

Scott Crichton, American Civil Liberties Union Testimony handed in. (EXHIBIT #5)

{Tape: 2; Side: A; Approx. Time Count: 8:55; Comments: None.}

Questions From Committee Members and Responses:

SEN. CHRISTIAENS Item #2 of (EXHIBIT #4) gives them 3 years to meet ACA standards, why are they allowed that long to meet the standards? **Mr. Anderson** ACA has construction standards which will be met right away. It usually takes 18-24 months to get accredited for ACA operational standards. We're trying to give them a fair length of time to become ACA accredited.

SEN. CHRISTIAENS I'm troubled with the Bobby Ross Group not responding to people's calls. I find it interesting that they won't allow the news media to talk with county officials. **Mr. Shanahan** - I don't have personal knowledge of what you are talking about. I understand the purpose of this bill is to set up an accreditation situation whereby our organization would meet the standards set up by the State of Montana for a contractual arrangement. I'm not sure something in the State of Texas is relevant to this legislation but if you have a list of grievances I'd be glad to have them addressed.

SEN. CHRISTIAENS What did we not put in our contract with Texas that precludes this type of communication and how long before that can be changed? **Mr. Day** We didn't include the news media in the contract, the private operator makes the decisions on media access. We can cancel the contract with 60 days notice.

SEN. CHRISTIAENS If you decided media should have some input or that the educational components are not there, can you address that within 60 days? **Mr. Day** I don't know that we'd have to wait 60 days if we thought there were contract deficiencies. The current arrangement with the Bobby Ross Group was designed to be a temporary solution to an immediate problem.

SEN. CHRISTIAENS What kind of educational requirements do we have? **Mr. Day** Our contract called for the same programming environment as MSP. Due to distance, I can't confirm whether that has been effectively duplicated.

SEN. WATERMAN Someone testified that other states have ended up taking over private, for-profit corrections facilities. Do you perceive that the state would be in the situation of having to take over a private facility? **REP. BERGSAGEL** There is always that potential and it needs to be addressed.

SEN. GREG JERGESON I see a difference in the language in HB 544 and HB 83 regarding confinement of persons convicted out-of-state. Why is there this difference in language? **REP. BERGSAGEL** Last session, when we passed the bill implementing regional corrections facilities, many counties built their county site based on income from federal prisoners so they could afford to build the facility. If you place language in this bill or any other bill that restricts their ability to bring in out-of-state inmates, we have the potential of taking over the Great Falls or Missoula facility because they cannot financially operate that facility unless they bring in out-of-state inmates.

SEN. JERGESON Does the language in HB 83 tell the state if they enter into a contract with a private correctional facility we guarantee 100% occupancy? **REP. BERGSAGEL** Most of the contracts are based on 80-90% occupancy. They will sell bonds based on that occupancy and the per diem rate charged to DOC will include that.

SEN. JERGESON What will the private correctional facility do if the state doesn't have enough prisoners to cover the 80% occupancy rate? **REP. BERGSAGEL** I believe it is unlikely that will happen but there is the potential. I believe there will always be a growing prison population in this state. We also have the contract negotiation part of this, which happens every 2 years.

SEN. EVE FRANKLIN What kind of process do you have in place to monitor these contracts? **Mr. Day** We have a contract unit within the department that is responsible for developing requests for

proposals (RFP) and contracts. We also utilize other state's knowledge and the ACA licensing procedures. We have requested a full time contract monitor and plan to inspect the facilities.

SEN. FRANKLIN Are you currently monitoring the Dickens, Texas facility? **Mr. Day** Yes, to the best of our ability since we don't have an on-site person.

CHAIRMAN SWYSGOOD Have you looked at the amendments that were offered by the department? **REP. BERGSAGEL** I have only looked at them briefly, I would like the chance to look at them in more detail. I want some oversight on the contracts, the department would like to eliminate the Legislative Auditor, I suggest changing this to the Legislative Finance Committee.

{Tape: 2; Side: A; Approx. Time Count: 9:11; Comments: None.}

Closing by Sponsor:

REP. BERGSAGEL The purpose of HB 83 is to control privatization, to protect the citizens of this state and to make sure it is done in a fashion we, Montanan's, want.

{Tape: 2; Side: B; Approx. Time Count: 9:47; Comments: None.}

EXECUTIVE ACTION ON HB 544

Amendments: Amendment #hb054403.asf. (EXHIBIT #6)

Motion: SEN. WATERMAN MOVES TO AMEND HB 544 WITH AMENDMENT #HB054403.ASF.

Discussion: SEN. WATERMAN This clarifies the language on page 3, line 17 & 18. It is not my intention to change REP. VICK'S amendment.

Ms. Fox If the state contracted for 80% of beds perhaps it could be construed that there was 20% left for out-of-state prisoners. This language makes it clear that this is for the prison portion of the facility.

SEN. WATERMAN We've told the people of Montana that we will not be importing prisoners and I think this clarifies that but will not restrict the local governments on what they do with their part of the facility.

SEN. CHRISTIAENS How will this fit with the contracts that are already in place for regional jails? **Mr. Anderson** This language clarifies the intent of the current contracts. I don't think this amendment would bother the department.

Vote: THE MOTION TO AMEND HB 544 WITH AMENDMENT #HB054403.ASF FAILED 6-9 ON ROLL CALL VOTE.

Motion/Vote: SEN. KEATING MOVES HB 544 BE CONCURRED IN. THE MOTION CARRIED WITH SEN. JERGESON AND WATERMAN VOTING NO. SEN. LYNCH will carry HB 544.

{Tape: 2; Side: B; Approx. Time Count: 10:00; Comments: None.}

EXECUTIVE ACTION ON HB 83

Motion: SEN. KEATING MOVES HB 83 BE CONCURRED IN.

Amendments: Amendment #hb008310.asf. (EXHIBIT #7)

Motion: SEN JERGESON MOVES TO AMEND HB 83 WITH AMENDMENT #HB008310.ASF.

Discussion: SEN. JERGESON This amendment provides for a public vote on private prisons.

Vote: THE MOTION TO AMEND HB 83 WITH AMENDMENT #HB008310.ASF FAILED 8-9 ON ROLL CALL VOTE.

Motion: SEN. KEATING MOVES TO AMEND HB 83 WITH (EXHIBIT #4).

Discussion: SEN. JERGESON I would like to separate the portion taking out oversight by the Legislative Auditor so it remains in the bill.

SEN. JENKINS These amendments don't match the bill.

CHAIRMAN SWYSGOOD Items #8 & 11 will be separated from this. A great amount of time was spent on this bill in the Select Committee, I don't know why the department didn't bring these amendments to that committee.

Mr. Anderson I apologize for the problem with these amendments. I believe amendment 18 should be line 29 instead of 28. We didn't know how the Select Committee was going to amend the bill until after action was taken. We talked with the Legislative Audit Division and REP. BERGSAGEL because the bill came out of committee in a messy fashion. We have been working with everyone on the Select Committee to make this a workable bill. I understand your action on separating legislative oversight but the rest of the amendment is an attempt to make it a better bill. It is not intended to add substantive changes to the intent of the Select Committee.

CHAIRMAN SWYSGOOD If these amendments pass it will be with the understanding that the technical implementation be left to staff to work out.

SEN. CHRISTIAENS I'm not sure that the same things aren't already in the bill.

Vote: THE MOTION TO AMEND HB 83 WITH (EXHIBIT #4) SEPARATING OUT ITEMS #8 & 11 FAILED 5-11 ON ROLL CALL VOTE.

Motion: SEN. KEATING MOVES TO AMEND HB 83 WITH ITEMS #8 & 11 FROM (EXHIBIT #4).

Discussion: SEN. JERGESON The reason I asked for separation is that the amendment was to take any legislative oversight out of this bill. I don't think that is appropriate, there has to be some responsible legislative oversight as we get into this new territory.

SEN. KEN MILLER I would like to hear why SEN. KEATING thinks the Legislative Audit Committee should be taken out. SEN. KEATING The Legislative Auditors job is to audit and if they are a party to the contract then that is a conflict of interest when it comes time to audit.

SEN. WATERMAN Doesn't this occur in other areas and don't they try to do a private audit? SEN. KEATING The Legislative Auditor avoids all kinds of contacts with government agencies they have to audit to avoid that conflict of interest.

Vote: THE MOTION TO AMEND HB 83 WITH ITEMS #8 & 11 IN (EXHIBIT #4) CARRIED 11-5 ON ROLL CALL VOTE.

Discussion: SEN. LYNCH "The private correctional facility is responsible for all monitoring incurred by the state," if they are monitoring the people that are paying the bills, isn't that a conflict of interest? It seems to me the state should be paying their own monitors. SEN. KEATING The state charges inspection fees for all kinds of things. That is what this is.

SEN. LYNCH Page 8, subsection 3, if an inmate kills another inmate or one hangs himself and there is a lawsuit, is the facility or the state responsible? Can the state absolutely disassociate itself of any responsibility? Mr. Anderson Amendment #18 of (EXHIBIT #4) would have clarified that language. We didn't think that was substantive because that language was agreed to in the Select Committee but wasn't put in.

Motion: SEN. LYNCH MOVES TO AMEND HB 83 WITH ITEM #18 OF (EXHIBIT #4) WITH THE TECHNICAL CORRECTIONS NECESSARY TO MAKE IT WORK.

Discussion: SEN. LYNCH Does this make the state responsible as well? Mr. Anderson This question was asked during subcommittee and the attorneys felt this language was correct.

SEN. LYNCH Are we responsible in Texas if an inmate murders another inmate? Mr. Anderson Yes.

SEN. LYNCH WITHDRAWS HIS MOTION TO AMEND.

Motion/Vote: SEN. JERGESON MOVES TO AMEND HB 83 BY STRIKING "PROVIDE" AND INSERT "GUARANTEE". THE MOTION FAILED 7-9 ON ROLL CALL VOTE.

Discussion: SEN. CHRISTIAENS I find it ludicrous to be dealing with department bills without having the right people here to answer our questions. CHAIRMAN SWYSGOOD The department was informed before they left that executive action would take place and I'm going to continue with it. I apologize to Mr. Anderson for this.

SEN. LARRY BAER We may have put this bill in the position of requiring a two-thirds vote on the floor because of the indemnity issue on line 28-30. That may be of concern to people who want to pass this bill.

CHAIRMAN SWYSGOOD I'm going to delay further action on this bill until we can get someone from the department to answer these questions.

{Tape: 2; Side: B; Approx. Time Count: 10:20; Comments: None.}

GOVERNOR RACICOT'S ADDRESS ON SB 374

GOVERNOR MARC RACICOT I appreciate your indulgence of this unusual circumstance. This is an issue of significant magnitude and I wanted to provide the opportunity for you to cross examine me because this issue is before you as a result of my decision. I understand that the committee is substantially elevated in mood in reference to SB 374 and I can understand why. I may be able to provide some insight and persuasion to have you act favorably on this particular piece of legislation. This is the product of an extraordinarily conservative Republican congress and I understand not every member of congress was aware of what they were doing. There are some intrusive portions of this bill that have caused you concern, but there are practical reasons to carefully think this decision through. It is my understanding that you have not had any objections lodged by the business community, I believe they recognize we may sacrifice the opportunity to continue to move forward with the progressive welfare reform process you put in place during the last legislative session and we will also place our child support capabilities in substantial disarray. We have been informed, in unequivocal terms, by the U.S. Department of Health and Human Services that if we do not proceed in this direction we will not be in the position to proceed with the revenue sharing arrangement we presently have in place. There is a great deal riding on your decision. You may have to hold your nose as you move in this direction, but approving this piece of legislation is the right thing to do.

CHAIRMAN SWYSGOOD The problems with this bill crosses both sides of the aisle. I'm grateful that you are willing to listen to our concerns as it relates to the intrusiveness of this bill. We

because it is a massive reduction in the funding available to do some very important things that are commanded by our law.

CHAIRMAN SWYSGOOD We appreciate your coming before us to answer questions. Your comments will be taken under advisement. **GOV. RACICOT** I'd be happy to come back any time.

{Tape: 3; Side: A; Approx. Time Count: 10:44; Comments: None.}

EXECUTIVE ACTION ON HB 83

Motion: SEN. LYNCH MOVES TO AMEND HB 83 BY STRIKING SUBSECTION 3, PAGE 8, LINES 28-30.

Discussion: SEN. LYNCH I think Mr. Anderson is correct but you don't insulate yourself from liability when you contract with someone else. If you are trying to indemnify the state from responsibility it takes a two-thirds vote in the legislature.

Mr. Ohler This amendment was put on by the House Select Committee on Corrections and is not a department amendment. It places the cost of legal defense on the private contractor for incidents that occur in the private prison. We do that all the time with private providers.

SEN. LYNCH If a Montana prisoner murdered another Montana prisoner in Spur, Texas, you are saying the Texas facility would have to incur all the legal expenses. **Mr. Ohler** With this example, the surviving family members of the inmate who has been killed will file a lawsuit naming everyone they can possibly name, probably Dickens County, the Bobby Ross Group and the State of Montana. We have an indemnification clause in our contract with Dickens County where they are responsible for their negligence and they agree to defend and indemnify us if we get sued as a party to their negligence.

SEN. LYNCH Won't there always be negligence? Are we insulated from everything that happens? Can we do that? Does the court uphold that? **Mr. Ohler** Yes, we do that with the contract, they are responsible for their errors. The court does uphold that contract. We're still going to get sued and have defense costs but the Bobby Ross Group has to pay for our costs. This is true of all community correctional facilities in the state.

SEN. LYNCH Wouldn't it be smart for the state to send every bad boy out of our prison? **Mr. Ohler** Most places won't take the bad boys.

SEN. LYNCH WITHDRAWS HIS MOTION TO AMEND.

SEN. CHRISTIAENS Pre-release centers currently operate under the same language.

SEN. KEATING Item #18 on the department amendments (EXHIBIT #4), is that clean-up language or is it necessary? **Mr. Ohler** The

language we have proposed is clean-up language for what is already in the bill. I believe we require this in our contracts, so I don't know that it is necessary.

SEN. WATERMAN I'm concerned that the department will not be able to monitor a private facility. We also have no legislative oversight of this process.

Motion/Vote: SEN. KEATING MOVES HB 83 BE CONCURRED IN AS AMENDED. THE MOTION CARRIED 15-2 ON ROLL CALL VOTE. SEN. BECK will carry HB 83.

{Tape: 3; Side: A; Approx. Time Count: 10:57; Comments: None.}

RECONSIDER SB 267

Motion/Vote: SEN. MOHL MOVES TO RECONSIDER ACTION ON SB 267. THE MOTION CARRIED 9-8 ON ROLL CALL VOTE.

EXECUTIVE ACTION ON SB 267

Amendments: Amendment #hb026701.agp. (EXHIBIT #8)

Motion: SEN. MOHL MOVES TO AMEND SB 267 WITH AMENDMENT #HB026701.AGP.

Discussion: CHAIRMAN SWYSGOOD Currently, there is a \$6.4 million General Fund impact with SB 267. This amendment diverts the amount necessary to administer the school trust before it goes into the school trust fund.

SEN. KEATING Is this \$6 million additional expense for running the department? I don't understand where the \$6 million shortfall is. **CHAIRMAN SWYSGOOD** \$6.4 million is the money necessary to fund the agencies and state lands. It is created by transferring those that are currently funded out of RIT and into the General Fund.

SEN. KEATING It looks like the proposal is to divert money that is going into the permanent education trust fund from oil, gas and coal royalties and the sale of property. That money will be put into the General Fund to finance the portion of state lands that currently administers the Resource Indemnity Trust fund interest income. By doing this it will increase the amount of spending out of the RIT program by increasing grants for water development projects, etc. You are adding General Fund revenue out of money that does not normally come to General Fund to increase spending in the RIT. I thought our job was to cut spending or at least have appropriate spending for useful and necessary programs. I resist the motion, I don't think this is a good source of revenue.

Vote: THE MOTION TO AMEND SB 267 WITH AMENDMENT #SB026701.AGP FAILED 7-10 ON ROLL CALL VOTE.

amendments to house bill no.83
third reading copy

senate finance and claims committee .

1. Page 2, line 17.

Following: "RULES"

Insert: "including minimum standards for the construction, operation, and physical condition of a private correctional facility and for the security, safety, health, treatment, and discipline of persons confined in them."

2. Page 2, lines 17, 18 and 19.

Strike: "THAT" through "OPERATION."

Insert: "(b) the rules must require the private correctional facility conforms to the applicable american correctional association and national commission on correctional health care standards for the facility and achieve accreditation from the American correctional association and national commission on correctional health care within 3 years from the date the facility begins operation."

3. Page 2, line 20.

Strike: "(B)"

Insert: "(c)"

4. Page 5, line 2.

Following: "13],"

Insert: "applicable"

5. Page 5, line 3.

Following: "ASSOCIATION"

Strike: "guidelines"

Insert: "and national commission on correctional health care standards"

6. Page 5, line 8.

Following: "statutes."

Insert: "applicable"

7. Page 5, line 9.

Following: "association"

Strike: "guidelines"

Insert: "and national commission on correctional health care standards"

8. Page 5, lines 11 through 15.

Strike: "'UPON" through "DEPARTMENT"

9. Page 5, line 16.

Strike: "grant"

Insert: "facility"

10. Page 5, line 16.

Following: "correctional"

Insert: "needs, objectives and"

11. Page 5, line 17 through 18.

Strike: "THE" through "DETERMINATION"

12. Page 5, line 22.

Strike: "PROVIDES" through "LOCATED"

Insert: "is constructed in accordance with American correctional association facility construction requirements. In addition, the private correctional facility must comply with any other applicable local, state or federal laws or regulations."

13. Page 7,

Strike: Section 8 in its entirety

Renumber: subsequent sections

14. Page 9, line 19.

Strike: "ESTABLISHED"

Insert: "applicable"

Following: "ASSOCIATION"

Strike: "GUIDELINES"

Insert: "and national commission on correctional health care standards"

15. Page 9, line 22.

Following: "13]"

Strike: "and"

Insert: ", applicable American correctional association and national commission on correctional health care standards,"

Following: "rules,"

Insert: "and contract requirements,"

16. Page 10, line 25.

Strike: "OR PROPOSED"

17. Page 7, line 23 and 24.

Strike: "THE DEPARTMENT" through "DEPARTMENT TO"

Insert: "The contract must provide that a private contractor may not"

18. Page 8, line 28.

Following: "SUBDIVISION"

Insert: "for defense of legal actions"

Following: "INMATE"

Insert: "which accrue"

19. Page 8, line 10.

Strike: "DEVELOP OR"

20. Page 8, line 11 and 12.

Strike: "BASED" through "SYSTEM"

Insert: "not approved by the department"

back," by Chris Bryson, this page.)

This alliance between private prison operators and more traditional law-and-order advocates is only natural. David Shichor, professor of criminal justice at California State University-San Bernardino, calls it the "Hilton scheme": "You want to keep your hotel always full."

But unlike the NRA, companies like Wackenhut and the Bobby Ross Group have direct power over prisoners' lives. Marc Mauer, of the Washington, D.C.-based Sentencing Project, warns that the profit incentive for private prison companies could lengthen prisoners' stays. "A critical issue is accountability," Mauer says. "You can imagine someone coming up for probation. The tendency of a private prison will be not to release them."

At Lockhart, for example, Wackenhut officials decide when inmates should be disciplined or given "good time"—both factors considered by parole boards. Inmates can appeal disciplinary actions to a public board, but in making judgments about convicts' futures, the profiteer stands between the prisoner and the state.

Companies serving the corrections industry need an ample quantity of raw material to ensure long-term growth. Since that raw material is prisoners, the industry will do whatever it can to guarantee a steady supply. ◀

Kristin Bloomer is a staff writer for the *Rutland Daily Herald* in Vermont.

The NRA strikes back

By Chris Bryson

An important and largely overlooked force driving the prison boom in the United States is the National Rifle Association. With a membership of some 3 million, an estimated war chest of \$140 million, and paid lobbyists in all 50 states, the NRA has thrown its weight behind so-called "get tough on crime" measures and prison-building initiatives.

In an attempt to change its image from pro-gun to anti-crime, the NRA formed *CrimeStrike* in 1991 as a division of its lobbying arm, the Institute for Legislative Action. The NRA shifted gears in response to growing popular disgust with the group's opposition to the Brady bill and its support for the sale of assault rifles and teflon-coated "cop-killer" bullets. Those campaigns had also drawn attacks from law-enforcement groups that had once supported the gun lobby.

"It's frightening how effective *CrimeStrike* has been," says Steven Donziger, editor of *The Real War on Crime*. By orchestrating well-funded efforts to lengthen prison sentences and build new prisons, Donziger says, *CrimeStrike* has effectively served as a front group for the many constituencies that profit from an expanded crime-control and prison industry.

CrimeStrike logged its first victory in November 1993 when it backed Washington state's "Three Strikes and You're Out" initiative, the nation's first. The NRA provided

Jailhouse stock

By Ken Silverstein

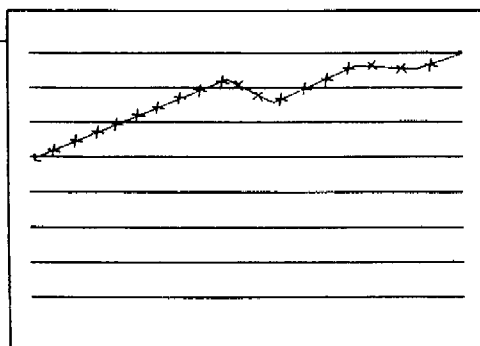
The euphoria among proprietors of private prisons is shared by financial analysts, who are herding investors into Wall Street's latest "boom" industry. The headline above a recent *USA Today* story—"Everybody's doin' the jailhouse stock"—cheerfully captures the exhilaration of industry watchers.

The astronomical rise in the stock-market value of private prison companies is making investors giddy; the value of Corrections Corporation of America (CCA) stock, for example, has quadrupled during the past four years. Brian Ruttenbur, a Nashville-based analyst for Equitable Securities Corp., believes share prices will continue to climb. "There's a lot of investment opportunities out there," he says. "During the next 12 to 18 months, I expect [private prison] stocks to rise by an average of 40 percent, and perhaps by more."

Because they are private firms that answer to shareholders, prison companies have been predictably vigorous in seeking ways to cut costs. In 1985, a private firm announced its intention to build a prison in Pennsylvania on a toxic-waste dump, which it had bought at the bargain rate of \$1. The state legislature, however, rejected that plan.

To be profitable, private prison firms must ensure that new facilities are not only built, but also filled. A bullish report on CCA issued by Prudential Securities cautions, "It takes time to bring inmate population levels up to where they cover costs. Low occupancy is a drag on profits." Still, says the report, company earnings will be strong if CCA succeeds in "ramp[ing] up population levels in its new facilities." A 1995 Prudential report on Wackenhut, the other behemoth in the private prison industry, reflects the same concern: "The fine tuning of earnings figures hinges critically on bed count and when new prisons become occupied."

The outlook on this front, however, appears promising. Ruttenbur co-authored a 1997 study entitled "Crime Still Pays," which notes that the U.S. prison population "is expected to more than double" during the next 10 years, primarily due to "increasing crime, rising incarceration rates and longer prison sentences." More good news for investors is the rising incidence of juvenile crime—"a time bomb set to explode"—and growing opportunities in the international market.



\$50,000 in crucial last-minute financing that enabled the local sponsor, Washington Citizens for Justice, to place the initiative on the ballot. "We would have failed without CrimeStrike," says Dave LaCourse, the group's director.

That success was rapidly followed by similar victories in California and Virginia, where NRA lobbyists again provided essential money and manpower to "three strikes" campaigns. In Virginia and Mississippi, according to CrimeStrike state legislative affairs director Susan Mislora, the NRA was "instrumental" in passing truth-in-sentencing measures, which lengthened average prison sentences.

CrimeStrike has also led the charge to accelerate prison-building programs around the country. In Texas in 1993 and Mississippi in 1994, the NRA lobbied for billion-dollar bond initiatives to fund prison construction. The NRA-backed public ad campaign in Texas led to the construction of an additional 76,000 prison beds in two years. The state has imported prisoners from as far away as Hawaii to fill the cells and has hired 12,000 new prison staff to guard the growing inmate population.

At the federal level, the NRA lobbied hard for the 1994 crime bill, which, among other things, increased the federal funds available to states for building new prisons from \$3 billion to \$10 billion. CrimeStrike executive director Elizabeth Swazey says the frequency with which legislators quoted from NRA literature during congressional debate on the bill illustrates how effective CrimeStrike was.

Swazey calls juvenile justice "one of the most important areas of criminal justice reform." CrimeStrike is currently examining juvenile-sentencing laws in all 50 states and lobbying for new measures to have young people sentenced as adults.

The NRA's embrace of "get tough on crime" rhetoric is paying off. Despite the widespread criticism of the NRA in the early '90s, donations to the organization's legislative fund rose to \$18 million in 1993, about double the amount given in 1988, according to Donziger. "There is a direct link," he says. "They recognized a business opportunity, and they chose to exploit it."

Chris Bryson is a freelance writer based in New York City.

"This industry can grow in bad times as well as good because the crime rate goes up during recessions, and that means jail populations go up as well," Rutenbur says. He notes, for example, that rates of robbery, assault and murder increased significantly during the past two recessions, with murder rates climbing by 6.2 percent during the 1981 downturn and 4.3 percent during the recession of 1990-91. All of this adds up to a "strong buy" recommendation from Rutenbur for the stocks issued by three major private prison companies.

On the other hand, prison disturbances can create real problems for investors. The share price of Esmor Correctional Services Inc. stock plunged from \$20 to \$7 following the 1994 riot at its immigrant detention center in Elizabeth, N.J.

Ken Silverstein is co-editor of *Counterpunch*, an investigative newsletter.

CRIMESTRIKE

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B L A C K A M E R I C A

My own private Alcatraz

The loss of inner-city jobs and the errant logic of the drug war have spawned an incarceration epidemic that is crippling African-American communities—and fueling a corrections industry that uses black youth as its main raw material. “While arrests and convictions are steadily on the rise, profits are to be made—profits from crime. Get in on the ground floor of this booming industry now!” blared a brochure for a “Privatizing Corrections Facilities” conference held this month in Dallas. “Firms which provide management of correctional facilities are booming with investment opportunities,” the brochure disclosed. “Revenues and earnings have grown substantially already between 1994 and 1995, and are expected to jump even higher during the next few years.”

Exploding prison populations are a tragedy for the black community but a cash cow for American business.

By Salim Muwakkil

There are now 1.6 mil-

lion people behind bars in the United States—triple the number there were 16 years ago. According to the Bureau of Justice Statistics, during the 12 months that ended June 30, 1995, the number of prison inmates grew by 89,707, the largest annual increase in U.S. history. According to a 1995 study by the Washington-based Sentencing Project, African-Americans are the predominant and fastest growing inmate population. Blacks comprise about 12.5 percent of the U.S. population, but make up about 50 percent of the inmate population.

While most prisons are still owned and operated by the government, private corporations are getting into the act. Several dozen companies now build or operate jails on behalf of the government. The largest players are Wackenhut Corrections Corporation and Corrections Corporation of America (CCA), which are under contract to run 93 minimum- and medium-security facilities with more than 60,000 beds. Wackenhut earned a spot last year among *Forbes* magazine’s

“200 Best Small Companies” after registering a decade of steady growth.

The growing profitability of the field is enticing many other corporations, including construction giant Bechtel Corp., but analysts see no sign of a glut in the near future. According to an article by Randy Gragg in the August 1996 issue of *Harper’s Magazine*, by the end of 1994, 13 states had private prisons; by the end of 1997, 102 private prisons will be in operation.

Private prisons are not a new phenomenon. In fact, they were common in the United States in the second half of the 19th century and the early part of this century. They were finally outlawed in 1925 after a rash of newspaper stories detailed prisoners being malnourished, brutally beaten and overworked, and after labor and business groups complained of unfair competition.

Private prisons came back on the scene in 1984, when the federal government contracted with CCA to operate an immigration detention center in Houston. Not surprisingly, private prisons and detention centers today are facing the same sort of charges as they did 70 years ago. In June 1995, for example, a facility run by Esmor Correctional Services Corporation was closed down after undocumented immigrants rioted. An INS report on the incident concluded that Esmor had skimmed on food, repairs and guard salaries in order to generate greater profits.

Corporate interest in prisons extends beyond ownership and management of facilities. Some firms reap fortunes providing laundry, food and other services. Long-distance phone carriers, for example, are making aggressive pitches to prisons to carry their pay phones. Prisoners must phone collect, a service for which companies charge substantially higher

rates. A single prison phone can gross \$15,000 per year—five times more than a phone booth on the street. In return, the prisons receive kickbacks in the form of commissions.

Federal and state prisons now employ inmates to produce goods for sale. From 1980 to 1994, the number of inmates employed in prison industries jumped 358 percent, while the number of federal and state prisoners increased by only 221 percent, reports the Correctional Industries Association. These prisoners make products from paint brushes to prescription eyewear to Patriot missile parts, all for a fraction of what workers get paid on the outside.

Since 1990, 30 states have made it legal to contract out prison labor to private companies. Prison industries' sales rose from \$393 million in 1980 to \$1.81 billion in 1995, according to a spokesperson at the Justice Department. In Arizona, the *San Francisco Chronicle* reports, 10 percent of all inmates work for private companies, making less than minimum wage. Some prisoners in that state test blood for major medical firms, and others raise hogs for John's Meats. In New Mexico, prisoners take hotel reservations by phone. In Ohio, inmates do data entry. Prisoners in Ohio used to make Honda parts as well, until political pressure from labor unions forced an end to that particular arrangement. Oregon prisoners sew jeans called "Prison Blues." And Spalding golfballs are packed by imprisoned labor in Hawaii.

The Wackenhut facility in Lockhart, Texas, has taken prison labor to a new level of sophistication. A 1995 article by Reese Erlich in *Covert Action Quarterly* described how Lockhart Technologies, Inc.—one of the three private companies doing business at the prison—received an entirely new facility from Wackenhut built to specifications for prison labor. The company, which assembles and repairs circuit boards for corporations like IBM and Texas Instruments, pays only \$1 a year in rent and gets a tax abatement from the city. Lockhart closed its circuit board assembly plant in Austin, laid off 150 workers and moved all the equipment to the Wackenhut facility, where the company pays prisoners minimum wage. The prison takes about 80 percent of inmate wages for room and board, victim restitution and other fees.

The United States is building prisons at an unprecedented rate—123 state and federal prisons opened or were under

construction in 1996 alone. The cost of constructing enough cells just to keep up with the inmate increase is estimated to be more than \$6 billion a year, according to a 1995 report by the Edna McConnell Clark Foundation. According to the U.S. Census Bureau, nearly 600,000 full-time employees worked in corrections in 1995, more than in any Fortune 500 company except General Motors.

Over the past five years, Texas' prison population has increased from 30,000 to 127,000. The state, which has the nation's highest incarceration rate, houses its overflow in county jails. Florida, another state heavily involved in prison construction, now has 67,000 prison beds, but will add 18,000 more over the next three years. State officials warn that new sentencing guidelines will require 58,000 additional beds over the next decade to house the new inmate influx.

California, with the nation's largest prison population (135,000), now spends more public funds on corrections than on higher education. The Center on Juvenile and Criminal Justice, a San Francisco-based public policy group, found that 9.4 percent of the state's general fund went to corrections, while higher education got 8.7 percent. This is a dramatic shift in spending priorities from 1980, when 9.2 percent of the fund was devoted to higher education and only 2.3 percent went to prisons.

The center's report, entitled "From Classrooms to Cell-blocks: The Effects of Prison Building on Higher Education and African-American Enrollment," found that California's prisons now have twice as many blacks as its four-year public universities. At the same time, the report noted, rising tuition fees are putting higher education out of reach of many Californians, especially African-Americans. "Since 1980, California has made policy and fiscal decisions that increasingly favor locking people up rather than providing them with higher education," the report concluded.

The cost of corrections, including state, local and federal budgets, ran to more than \$30 billion a year in 1994. New prison spending—at a time of general budget austerity—is a clear indication of government priorities. Most troubling of all, the profits of this burgeoning industry are made off the backs of African-Americans.



when I appeared in person to request a visit.

Since the prisons are on private property, the Texas Department of Corrections has its hands tied when it comes to protecting prisoners' First Amendment rights in such cases, according to Glen Castlebury, a spokesperson for the Texas Department of Corrections. "There's no regulation whatsoever of the private prisons (in these matters)," he says. "They're scot-free to do whatever they please."

Despite documented abuses and dubious savings, it will be difficult to slow the momentum of private prisons, which have become a political force to be reckoned with. CCA and Wackenhut together gave almost \$150,000 in federal and state political contributions during the 1995-96 electoral cycle, according to reports filed with the Federal Election Commission. The companies gave mostly to Republicans, but they also hedged their bets by giving money to pliant Democrats. Having promised to reduce the federal payroll substantially, many Democrats, including Bill Clinton, support prison privatization.

Some of Wall Street's largest investment houses, including Goldman Sachs & Co. and Smith Barney Inc., are competing to underwrite the bonds for the prisons. (See "Jail-

house stock," by Ken Silverstein, page 18.) Other huge companies also have a stake. American Express, for example, invested approximately \$31 million in the \$38 million Great Plains Correctional Facility in Hinton, Okla., according to the prison's warden, Tom Martin. Great Plains is a private prison that houses inmates from North Carolina.

Prison companies also buy lobbying power. Rodney Blonien, a powerful California lobbyist and former corrections official, was paid more than \$600,000 by a variety of corrections clients between 1989 and 1994, according to the *Los Angeles Times*. Wackenhut alone paid him \$220,260 during that period, the newspaper reported.

Private prison companies have some powerful allies in the fight for stiffer sentences and more prison spending. For example, the California Correctional Peace Officers Association, which has grown from 4,000 to 23,000 in the last decade, gave more than \$1 million to various California state politicians in 1996. The prison lobby is also supported by the National Rifle Association. Armed with an agenda of deflecting public fear away from guns and toward people, the NRA successfully lobbies for prison construction and three-strikes-and-you're-out laws. (See "The NRA strikes

Zephur, lifting weights in the outdoor recreation yard.

Critics worry that prison labor undercuts outside wages and gives scarce jobs to prisoners. "I'm concerned that prisoners would be used as a union-busting tool," Marin says.

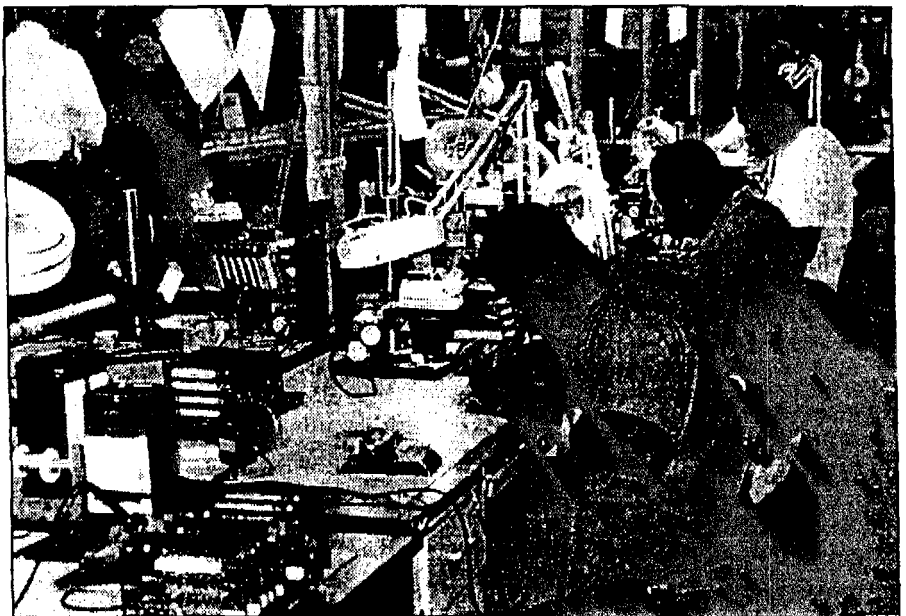
In fact, TWA has used inmate labor to break strikes. During a flight-attendant strike in 1986, TWA turned its reservation clerks into flight attendants and put inmates to work on the phone. The airline company still pays \$5 an hour to inmate reservation clerks at a juvenile facility in Ventura, Calif. That same work, when unionized, pays \$18 an hour.

Prison labor even beats out the competition in Mexico. In search of lower wages, San Francisco-based Data Processing Accounting Services moved U.S. assembly jobs to a maquiladora in Tecate, Mexico. But increased competition sent the company back to the United States in 1992—to San Quentin State Prison.

"Some of the work went to China and some of the work we sent to San Quentin," DPAS owner Bob Tessler says. "Our objective is to find low-cost labor." The company left San Quentin in 1996 because of high prisoner turnover, but it's looking for an alternative site, ideally at another prison.

Critics worry that health and safety standards in prison workplaces are not adequately enforced. Moreover, they argue, inmates can't organize, collectively bargain or obtain concessions from their employer, who is also their imprisoner.

"I think it's a disgusting economic development model," says Rick Levey, legal director for the Texas AFL-CIO. "When you have the social cost of maintaining such a massive criminal-justice system and you pay for that through super-exploitation of workers, that's a bad situation for the rest of society." —K.B.



Lockhart inmates paying their debt to society at 85 cents an hour.

detention center for illegal immigrants in Elizabeth, N.J., exploded in violence in June 1995 after Esmor Correctional Services Inc. hired inexperienced staff, served inmates a sub-standard diet and shackled detainees in leg irons. The Immigration and Naturalization Service center reopened last month under the management of CCA.

In 1995, allegations of rape and assault at the privately run High Plains Youth Center in Brush, Colo., prodded the state to admit it could not guarantee inmates' safety at private prisons. Run by the Rebound Corp. in Denver, the 180-bed juvenile facility houses youths from more than two dozen states.

In December 1995, officials from the University of Illinois at Chicago made a surprise visit to the juvenile lockup, where they documented "a consistent and disturbing pattern of violence, sexual abuse, clinical malpractice and administrative incompetence at every level of the program." One teen-age boy who had been sexually assaulted by another resident told investigators that when he had pounded on a locked door for help, staff told him to "just get back in bed." His attacker serially raped the boy for months, while the staff deliberately ignored it, the Universi-

ty of Illinois report found.

According to Jerry Adamek, director of Colorado's Division of Youth Corrections, the state had started in October 1995 to "negotiate" with Rebound about the unacceptable conditions. To date, the state hasn't removed a single youth from the facility.

Adamek, a proponent of prison privatization, acknowledged that the state's level of tolerance for Rebound was a result of its dependence on the company. "We were so desperate for beds even here in Colorado, we lowered some of our own levels of expectation," Adamek says. "The monitors knew if we went in and were too aggressive with it, we had the possibility of losing the contract provider."

The Colorado ACLU has sued the Bobby Ross Group, charging delayed access to medical care, overcrowded and unsanitary conditions, inexperienced and undertrained staff, and inadequate programs and services at its private prison in Karnes City.

Bobby Ross—a former Texas county sheriff—and his spokespeople refused to respond to the allegations. They also refused to distribute my letters to inmates. They returned the letters—opened—and ran me off the property

A captive labor force

The guards aren't the only people employed at the Lockhart prison.

Past air-conditioned corporate offices that prisoners built themselves, about 150 male convicts make air-conditioner valves for Chatleff Controls Inc. and circuit boards for Lockhart Technologies Inc.

These jobs were once held by 150 workers in Austin. But in 1995, LTI laid those workers off and transferred the jobs here. The company gets cheap labor—it pays workers minimum wage and doesn't have to provide benefits or vacations—and cheap rent of \$1 a year.

Men sit under work lamps, peering through microscopes and magnifying glasses at circuit-board parts. Some solder the parts on a "touch-up line"; others check for missing pieces. Each prisoner collects about 85 cents an hour from his paychecks. The rest goes to victims' compensation, taxes, family support and the prisoner's own room and board.

Prison labor, which exists in public and private prisons alike, is yet another lucrative enterprise in the prison business, netting a total of \$1.8 billion in 1995. Years ago, prisoners made nothing but license plates and furniture for state office buildings. Today, in 30 of the 50 states, they make a gamut of goods for the open market.

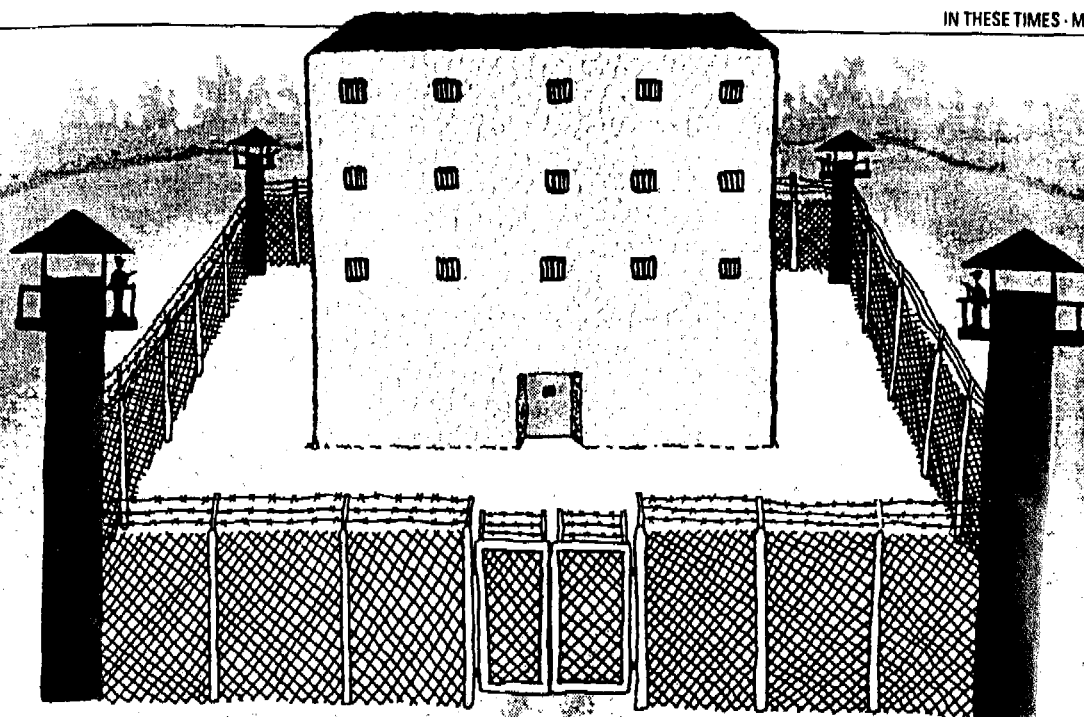
Inmates in Vermont, for instance, make snowshoes for Stowe Canoe and Snowshoe Co. Prisoners in California raise pigs for D.R. Ranch of Avenal. Oregon Prison Industries, which goes by the name of UniGroup, markets a line of convict-made blue jeans called "Prison Blues," selling back to the public the very "gangsta" culture it claims to crack down on through the criminal-justice system.

At Lockhart, Leonard Hilt, LTI's soft-spoken controller and former president, says he enjoys having "a captive work force." "They're here every day," Hilt says. "Their cars don't break down, they're rarely ill, and they don't have family problems. ... They're delightful to work with."

Many prison reformers favor prison labor because it teaches inmates marketable skills. Linda Marin, executive director of Texas-CURE (Citizens United for Rehabilitation of Errants), says programs like Lockhart's are an improvement over the state's tradition of forcing prisoners to work without pay. "If there's a means for them to earn money and get benefits—getting to work on time, having their work valued—that's a good thing," Marin says.

Sitting in the touch-up line at Lockhart with his name stenciled across the back of his undershirt, Rickey Davis says he likes the program because it lets him "better himself." "You can pretty much get yourself established for your release," says Davis, who is serving time on a cocaine charge. "You get a chance to send your kids some money out of your check." He can also earn "good time" off his sentence.

Not all inmates apply for the jobs, however. "I'm not going to work to pay the state to send me to prison," says Howard



480-bed, medium-security prison in Karnes City, Texas. The state of Colorado now warehouses more than 470 of its convicts at the Karnes County Corrections Center at a cost of about \$41 per day per prisoner. Of that amount, Karnes County government gets 25 cents per day per prisoner—for a total of about \$26,000 last year. "It sounded too good to be true to have a prison built without taxpayer money," says Karnes County Judge Alfred Pawelek. "The bottom line was we needed jobs. J-O-B-S. ... We were looking at empty classrooms if we didn't do something."

Last year, Romulus, N.Y., with a population of 3,000, voted by a 3-1 margin in favor of hosting a new state prison. The town is now a finalist in a 22-town competition for one of three state prisons to be built at a total cost of \$476 million. "The red carpet is out," town Supervisor Raymond Zajack says. "With the number of prisoners growing, it's a lucrative business, so to speak." Towns in Missouri, Washington, Florida and Virginia have also been clamoring for prisons to build in their backyards.

In a climate like this, it's no surprise that some entrepreneurs have sniffed out the possibility of making a buck. So far, private prisons incarcerate only about 50,000 prisoners—a small fraction of the total inmate population. But these private prisons have grown at four times the rate of public prisons, and experts predict their numbers will triple by the year 2000, with revenues topping \$1 billion. The two largest companies, Wackenhut and Corrections Corporation of America (CCA), together own about 75 percent of the

global market share.

Proponents of private prisons say companies like Wackenhut cut costs by 10 percent to 15 percent. "If I need something and it's at Wal-Mart, I can go to Wal-Mart and buy it," Skeens says. "I have a little more flexibility (than the state)."

Such savings have yet to be proved. The U.S. General Accounting Office reported in August 1996 that "comparisons of operational costs (between public and private institutions) indicated little difference and/or mixed results." For one thing, private prisons shift significant costs to the state. If an inmate at Wackenhut needs to be hospitalized, Skeens pays for the first 72 hours and the state pays the rest. Prisoners are screened for mental and physical health before being admitted—leaving costly prisoners in state lockups.

Nor is there any assurance that private companies will treat inmates adequately, even by the abysmal standards of public prisons. Government oversight of private prisons is lax. While most states require that private prisons be accredited by the American Correctional Association, critics say that ACA standards are minimal at best and that, even so, many private prisons fail to meet them. Most states require on-site, state-employed monitors to ensure contract compliance. Some states also require periodic site visits from independent boards. But these measures have failed to stem the abuse of inmates in private prisons.

In the competition to offer the best prisons at the lowest cost, prison companies sometimes skimp on food, rehabilitative programs or training for guards. One privately run

P R I S O N S

DATE 3/21/97

BILL NO. HB883

S. Finance
C. 10/19/88
S. Side
last floor

America's newest growth industry

With incarceration rates soaring, it was only a matter of time before entrepreneurs sniffed out a new business opportunity.

By Kristin Bloomer
LOCKHART, TEXAS

Thirty miles south of Austin on Texas Highway 183, past dozens of dusty, hardscrabble towns that boomed and then busted with the state's petroleum industry, one town named Lockhart is on the rebound.

The source of newfound prosperity, residents say, is the Lockhart Renaissance and Work Facility, the town's fourth largest employer. Located on Industrial Boulevard next to a machine shop, cookie factory and clothing maker, the flat-roofed, blue-and-white business looks a lot like an upscale Wal-Mart. Its neat, well-lit parking lot reserves spots for "Employee of the Month" and a few CEOs.

A secretary at the front desk invites me to wait in a plush chair in the large, white-tiled lobby while well-dressed men and women—members of the firm's 150-person work force—pass through glass

double doors to the building's interior. Eventually, a businessman named Greg Skeens walks out and introduces himself with a firm handshake.

Dressed in a crisp white shirt and silk tie, Skeens looks like an IBM executive. But he's not. He's the warden of this private, minimum-security prison run by Wackenhut Corrections Corp.

Lockhart residents boast that the prison, which holds 500 women and 500 men, has turned the town into an "international hub." Skeens gives at least one tour a month; his guests have included the home secretary of Great Britain and officials from Japan, Puerto Rico, Canada and the Navajo Tribal Council.

From the lobby, Skeens walks visitors through a series of controlled doors to the men's side of the prison. The wide central hall is bustling with inmates; a long line extends out the open door of the barber shop. Across the hall, prisoners pore over books in the law library, while in another nearby room, a group of about 20 inmates

bow in Muslim midday worship. In large "living areas," several prisoners watch a silent TV with headphones plugged into "listening tables."

"It's just like a small community," Skeens remarks with a smile. "We have a lot of talented people locked up in the state of Texas."

For the service of housing each inmate—most of whom are here for nonviolent offenses—the state of Texas pays Wackenhut about \$27 per day. Out of that, Skeens pays for everything "from housing and hygiene items to salary and utilities to any instructional materials." Any money left over is profit.

Business is booming for private prison operators like Wackenhut these days. While crime rates have remained fairly steady over the past 20 years, the number of people behind bars in the United States has tripled to 1.63 million, according to the Justice Department. Tougher penalties, especially for drug-related offenses, explain part of this growth. But the prison industry itself has also become a big player; it needs prisoners to keep it growing. The cost of building and operating prisons has jumped from \$6.8 billion in 1980 to \$30 billion today. Spending on corrections at the state level has increased faster than any other category of public spending, and an increasing proportion of this money goes to private companies.

Towns used to sue to keep prisons out. Now—in competition for jobs, tax revenue, utility connections and, in some cases, per-inmate payments—they're fighting to attract them. In Texas last year, several towns stampeded for 12 new state lockups; some offered free country-club memberships to the top officials of any prison that came to town.

In 1995, the Austin-based Bobby Ross Group built a



SENATE FINANCE AND CLAIMS
FUNDIT NO. 5
DATE 3/21/97
BILL NO. HB 83

P.O. BOX 3012 • BILLINGS, MONTANA 59103 • (406) 248-1086 • FAX (406) 248-7763

February 19, 1997

Mr. Chairman, Members of the Committee:

For the record, my name is Scott Crichton, Executive Director of the American Civil Liberties Union of Montana.

The private prison debate is upon us, but it would seem from accounts in the press, that the debate has already been concluded and that the outcome is clear- full speed ahead on privatizing prisons. While there is a rush to privatize all sorts of governmental functions, I am not convinced that any of the other privatization initiatives compare with privatizing prisons. The power to imprison is the most extreme sanction the state has against an individual short of the death penalty. And yet, it seems ironic that we have spent more time and energy discussing delegating some lesser functions of government, like privatizing liquor stores, than we are willing to devote to this central issue dealing with a core governmental function.

I remember thinking when we all found out that the DOC had committed \$3.6 Million to the Bobby Ross Group for out of state placement of inmates, my initial response was that this was a back door effort to introduce privatized prisons into the Montana corrections system.

But when you look at this bill's statement of intent, it begins in lines 10-11 "It is the intent of the legislature that rules adopted by the department ensure public participation in the siting of a private correctional facility". Where was I when the public participation was sought to determine whether the public wants privatized prisons? I don't remember the public or the legislature for that matter being consulted in any meaningful fashion when the Department first committed public dollars for private for profit prison space in Texas. Making that decision was a small bite sized initial affair experimenting with privatization. What are the early results from that experience?

In the Inmate Housing Agreement Montana Department of Corrections and County of Dickens, Texas: under 3. Termination- we have the assurance that "in the event the termination of this agreement without cause is due to the necessity to provide

additional bed space for Texas inmates, the STATE's inmates shall have priority for bed space in the Facility over all other inmates with the exception of Texas inmates." So this agreement is good through June 30, 1999 or until Texas needs the beds back.

This may sound like I'm arguing for private beds in Montana. That is not the case. Rather I'm asking questions regarding policy that need to be aired in full frank and honest way with citizens statewide. Not in DOC dog and pony show style, but perhaps with a sensitivity and professionalism that National Institute of Corrections has in their PONY programs regarding community responses to jail needs.

We're not yet into the 4th quarter of our experiment with privatized prisons in Texas, but some important questions have already been raised since the first 125 prisoners were moved at the end of June. For example, while the firing of the warden in the aftermath the inmate sit down strike was a personnel decision, the situation illuminates some real problem areas. How does the training compare for Corrections Officers working for the State of Montana versus recruits brought in to take over this Bobby Ross jail? Or if, as was the case in New Jersey two years back at the Immigration and Naturalization detention facility, the people running the private for profit facility are unable to maintain order, or worse, abdicate their responsibilities and vacate their posts, who then is in charge, and who then is their back up? What is their training, and who pays for them and then is in command?

If an inmate peacefully sitting down in protest over food conditions had been seriously injured by the live fire ordered by those in charge, or even killed, where would liability lie? Would the private facility claim they are not governmental entities and so are beyond public accountability as public actors? Would the State and the Contractor share liability? Would the immunities provided public employees be extended to employees of a private for profit company?

In the June 10, 1996 decision in the McKnight case, the Sixth Circuit held that private prison corporations are subject to Section 1983 suits as state actors but do not get qualified immunity because such corporations are more concerned with their profit margins than the public good. The Court recognizes that this ruling will likely result in increased litigation costs which will be passed on to the state.

As expressed by the Billings Gazette Opinion "Montana deserves answers". I'm not here to air the laundry associated with the Texas specifics, but rather to raise the concerns that are derivative from that experience and discuss their Big Sky impacts if indeed the people choose to continue down the path of privatization.

When and where was the debate held in discussing the pros and cons of privatization

* 88F.3d 417: 1996 05 App.

generically? It wasn't among the publicly discussed options less than a year ago-except euphemistically regarding shipping some out of state while we build regional prisons. Was it held before the mid October news of BRG looking to offer 125 jobs to the Deer Lodge Valley with construction as early as Jan 1998? It must have taken place over Thanksgiving, at least it was December 11 news that Rick Day is quoted "that in the coming years about 500 inmates each year will probably be held in private jails, whether out of state or in Montana." When they began sending inmates to Texas, state officials billed the move as a temporary solution to prison overcrowding. By Christmas eve, news was that \$11.8 million out of \$49 M being sought was for private beds. "Contracting for services would be faster than having the state build its own prison space to keep up with rapidly increasing inmate population", Day is quoted as saying.

Isn't that a rather hasty and somewhat stealth debate upon which we are now being asked to base major policy decisions with huge implications for generations to come? Speeding up the process of expanding our prison population could have tragic costly consequences. We over build. We always fill (beyond capacity) what we build. Will private prison bed spaces remain cheap once they become a significant portion of our prison system? Do private prisons maximize their profits by keeping as many people locked up for as long as possible? Or is that done by cutting health, safety and training standards? The profits to be made in the correctional-industrial complex (of which private prisons are part) are driving and distorting our criminal justice policies and will resort in enormous social and economic costs to society. Hard beds reserved for hard criminals makes sense. But hard beds should be last options for the majority of people in the corrections systems.

So let me close by saying that I am not against the state regulating and the public having the right to know regarding privatized governmental functions. It is for that reason that ACLU supported SB 200, which was opposed by the Governor and tabled February 12th. But I am still not conceding that it is inevitable that we make that radical commitment. I have included with my testimony two pages of conclusion from the Department of Corrections Advisory Council. I hope reading that will spur you to read the report in its entirety before passing any measure authorizing operations of private prisons in Montana. And I hope after reading it, you will reach a similar conclusion to go cautiously, go warily, and proceed when the facts are known and scrutinized in public discourse. I would suggest that this body appoint a commission, of corrections professionals and a committee like the DOC Advisory Council, and authorize their focus to evaluate what has been the experience in other states and what are the lessons to be learned before we commit down that path.

Thank you for your time and consideration.

Conclusion

The Advisory Council reviewed trends in the growth of state corrections populations, the Department's correctional population projections and the Department's plans to address future demand for services. This process has led the Council to conclude that most citizens are not familiar with the structure of the State's corrections system or the variables and entities that control the size of corrections populations. The Council believes that improved public understanding is important to the development of effective steps to resolve corrections system overcrowding.

The Advisory Council has also concluded that corrections overcrowding will persist until the demand for corrections services is balanced with the supply of those services and the State's ability and willingness to pay for them. The Council believes that the Department's adherence to its Mission Statement will carry out the public's wish to "get tough on crime" and bring accountability back to offender programs. Prison overcrowding cannot be solved solely by the Department, but must be embraced by the citizens and carried out by their political representatives.

The Advisory Council strongly recommends that the Department actively continue and expand efforts to alert and inform the public about correctional issues. Furthermore, the Council recommends that the Department recruit additional representatives of the Judiciary, the Legislature and law enforcement to support and assist those efforts.

The need for long term conclusive corrections planning and funding is apparent to this Council. The Department is proposing a substantial capacity expansion plan which was increased to accommodate larger projected populations. This increased capacity may still fall short of projected offender populations, due to continuing growth trends, sentencing changes and other contingencies..

The Advisory Council has not had sufficient time to analyze each department budget proposal. However, the Council recognizes the plans rely on a multi-faceted response to ever increasing correctional populations. This plan creates partnerships with local governments and new state facilities, and supports a realistic approach based on effective staffing levels and actual populations.

The Council concludes that the eventual solution to prison overcrowding in Montana will necessarily involve a renewed long-term commitment to the youth of this state. That commitment will involve placing a priority with the juvenile justice system so that limited financial and other resources will be considered for use first by the juvenile justice system when legislative decisions are being made with regard to state corrections. The Council believes that this basic change in philosophy is a vital investment in the future of corrections and the State of Montana.

The Council specifically endorses the concept of long term planning based on factual projections and generally endorses the Department's recommendations.

The Advisory Council also recommends that the Department:

- Continue to improve population projections.
- Pursue technological advancements via an integrated network in coordination with existing and proposed information systems.
- Continue public information efforts.
- Continue to explore options/suggestions which have come to the Department's or Council's attention since we began our public discussions, such as:
 - 1) A private prison equipped to incarcerate 500 state inmates,
 - 2) A new 500 state close/maximum security prison,
 - 3) A community based intensive/residential sex offender program,
 - 4) A 15-20 bed contract or facility to respond to the increasing number of 14-20 year olds sentenced as adults,
 - 5) A specialized program directed to 4th offense DUI inmates,
 - 6) A chemical dependency corrections facility.

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Amendments to House Bill No. 83
Third Reading CopyRequested by Senator Jergeson
For the Committee on Finance and ClaimsPrepared by Susan Byorth Fox
March 21, 1997

1. Page 7.

Following: line 4

Insert: "(4) The governing body's vote in subsections (2) or (3) may be overruled by the registered voters of that jurisdiction at an election held within 6 months of the vote of the governing body if, within 3 months of the vote of the governing body, that body is presented with a petition, signed by at least 5% of the registered voters, for an election on the question."



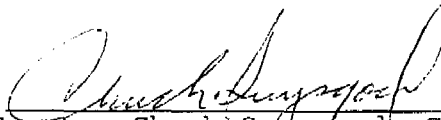
SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 21, 1997

MR. PRESIDENT:

We, your committee on Finance and Claims having had under consideration House Bill 83 (third reading copy -- blue), respectfully report that House Bill 83 be amended as follows and as so amended be concurred in.

Signed:


Senator Chuck Swysgood, Chair

That such amendments read:

1. Page 5, lines 11 through 15.
Strike: "UPON" on line 11 through "DEPARTMENT." on line 15.
2. Page 5, lines 17 and 18.
Following: "state."
Strike: "THE" on line 17 through "DETERMINATION." on line 18

-END-

 Amd. Coord.
Sec. of Senate


Senator Carrying Bill

621320SC.STS

MONTANA SENATE
1997 LEGISLATURE
FINANCE AND CLAIMS COMMITTEE

ROLL CALL

DATE 3/21/97

NAME	PRESENT	ABSENT	EXCUSED
SEN. CHUCK SWYSGOOD, CHAIRMAN	✓		
SEN. TOM KEATING, VICE CHAIRMAN	✓		
SEN. LARRY BAER	✓		
SEN. TOM BECK	✓		
SEN. JIM BURNETT	✓		
SEN. B.V. "CHRIS" CHRISTIAENS	✓		
SEN. EVE FRANKLIN	✓		
SEN. LOREN JENKINS	✓		
SEN. GREG JERGESON	✓		
SEN. J. D. LYNCH	✓		
SEN. DALE MAHLUM	✓		
SEN. KEN MILLER	✓		
SEN. ARNIE MOHL	✓		
SEN. LINDA NELSON	✓		
SEN. MIKE TAYLOR	✓		
SEN. DARYL TOEWS	✓		
SEN. MIGNON WATERMAN	✓		

SEN:1997
wp.rollcall.man
CS-09

MONTANA SENATE
1997 LEGISLATURE
FINANCE AND CLAIMS COMMITTEE
ROLL CALL VOTE

DATE 3/21/97 BILL NO. HB 83 NUMBER hb008310.asp

MOTION: amend

NAME	AYE	NO
SEN. CHUCK SWYSGOOD, CHAIRMAN		✓
SEN. TOM KEATING, VICE CHAIRMAN		✓
SEN. LARRY BAER	✓	
SEN. TOM BECK		✓
SEN. JIM BURNETT		✓
SEN. B.F "CHRIS" CHRISTIAENS	✓	
SEN. EVE FRANKLIN	✓	
SEN. LOREN JENKINS	✓	
SEN. GREG JERGESON	✓	
SEN. J. D. LYNCH		✓
SEN. DALE MAHLUM		✓
SEN. KEN MILLER	✓	
SEN. ARNIE MOHL		✓
SEN. LINDA NELSON	✓	
SEN. MIKE TAYLOR		✓
SEN. DARYL TOEWS		✓
SEN. MIGNON WATERMAN	✓	
	8	9

SEN:1997
wp:rlclvote.man
CS-11

MONTANA SENATE
1997 LEGISLATURE
FINANCE AND CLAIMS COMMITTEE
ROLL CALL VOTE

DATE 3/21/97 BILL NO. HB 83 NUMBER exhibit #4

MOTION: DOC amendments - items 8 & 11
separated out

NAME	AYE	NO
SEN. CHUCK SWYSGOOD, CHAIRMAN		✓
SEN. TOM KEATING, VICE CHAIRMAN	✓	
SEN. LARRY BAER		✓
SEN. TOM BECK		
SEN. JIM BURNETT		✓
SEN. B.F "CHRIS" CHRISTIAENS	✓	
SEN. EVE FRANKLIN	✓	
SEN. LOREN JENKINS		✓
SEN. GREG JERGESON	✓	
SEN. J. D. LYNCH		✓
SEN. DALE MAHLUM		✓
SEN. KEN MILLER		✓
SEN. ARNIE MOHL		✓
SEN. LINDA NELSON		✓
SEN. MIKE TAYLOR		✓
SEN. DARYL TOEWS		✓
SEN. MIGNON WATERMAN	✓	
	5	11

SEN:1997
wp:rlclvote.man
CS-11

MONTANA SENATE
1997 LEGISLATURE
FINANCE AND CLAIMS COMMITTEE
ROLL CALL VOTE

DATE 3/21/97 BILL NO. HB 83 NUMBER exhibit #4
MOTION: DOC amendment items #8-11

NAME	AYE	NO
SEN. CHUCK SWYSGOOD, CHAIRMAN	✓	
SEN. TOM KEATING, VICE CHAIRMAN	✓	
SEN. LARRY BAER	✓	
SEN. TOM BECK		
SEN. JIM BURNETT	✓	
SEN. B.F "CHRIS" CHRISTIAENS	✓	
SEN. EVE FRANKLIN	✓	
SEN. LOREN JENKINS		✓
SEN. GREG JERGESON		✓
SEN. J. D. LYNCH	✓	
SEN. DALE MAHLUM	✓	
SEN. KEN MILLER		✓
SEN. ARNIE MOHL	✓	
SEN. LINDA NELSON		✓
SEN. MIKE TAYLOR	✓	
SEN. DARYL TOEWS	✓	
SEN. MIGNON WATERMAN		✓
	11	5

SEN:1997
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CS-11

MONTANA SENATE
1997 LEGISLATURE
FINANCE AND CLAIMS COMMITTEE
ROLL CALL VOTE

DATE 3/21/97 BILL NO. HB 83 NUMBER _____
MOTION: amend page 5, line 26 to strike "provide"
and insert "guarantee"

NAME	AYE	NO
SEN. CHUCK SWYSGOOD, CHAIRMAN		✓
SEN. TOM KEATING, VICE CHAIRMAN		✓
SEN. LARRY BAER		✓
SEN. TOM BECK		
SEN. JIM BURNETT		✓
SEN. B.F "CHRIS" CHRISTIAENS	✓	
SEN. EVE FRANKLIN	✓	
SEN. LOREN JENKINS	✓	
SEN. GREG JERGESON	✓	
SEN. J. D. LYNCH	✓	
SEN. DALE MAHLUM		✓
SEN. KEN MILLER		✓
SEN. ARNIE MOHL		✓
SEN. LINDA NELSON	✓	
SEN. MIKE TAYLOR		✓
SEN. DARYL TOEWS		✓
SEN. MIGNON WATERMAN	✓	
	7	9

SEN:1997
wp:rlclvote.man
CS-11

MONTANA SENATE
1997 LEGISLATURE
FINANCE AND CLAIMS COMMITTEE
ROLL CALL VOTE

DATE 3/21/97 BILL NO. HB83 NUMBER _____

MOTION: BCCAA

NAME	AYE	NO
SEN. CHUCK SWYSGOOD, CHAIRMAN	✓	
SEN. TOM KEATING, VICE CHAIRMAN	✓	
SEN. LARRY BAER	✓	
SEN. TOM BECK	✓	
SEN. JIM BURNETT	✓	
SEN. B.F "CHRIS" CHRISTIAENS	✓	
SEN. EVE FRANKLIN	✓	
SEN. LOREN JENKINS	✓	
SEN. GREG JERGESON		✓
SEN. J. D. LYNCH	✓	
SEN. DALE MAHLUM	✓	
SEN. KEN MILLER	✓	
SEN. ARNIE MOHL	✓	
SEN. LINDA NELSON	✓	
SEN. MIKE TAYLOR	✓	
SEN. DARYL TOEWS	✓	
SEN. MIGNON WATERMAN		✓
	15	2

SEN:1997
wp:rlclvote.man
CS-11

DATE 3/21/97

SENATE COMMITTEE ON Finance & Claims

BILLS BEING HEARD TODAY: HB 544, HB 83

< ■ >

PLEASE PRINT

< ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
<i>Rep. Carlmark</i>	<i>H.D. 37 Buite</i>	<i>HB 544</i>	☒	☐
<i>Joseph A. Guiberson</i>	<i>H.D. 60</i>	<i>HB 544</i>	☐	☐
<i>Dave Ohler</i>	<i>D. of Corrections</i>	<i>HB 544 83</i>	☒	☐
<i>Ann J. Allen</i>	<i>B-5B County Pkg</i>	<i>HB 544</i>	☒	☐
<i>Ward Stanaba</i>	<i>Bobby Ross Gigs</i>	<i>HB 83</i>	☒	☐
<i>John O'Donnell</i>	<i>Anacosta-D. Lodge City LDC</i>	<i>HB 544</i>	☒	☐
<i>Riley Johnson</i>	<i>Wackenhut Corrections</i>	<i>HB 83 HB 544</i>	☒	☐
<i>Mrs. Barrett</i>	<i>Ind. pvt. % Art etc.</i>	<i>~</i>	☐	☐

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 55th LEGISLATURE - REGULAR SESSION

FREE CONFERENCE COMMITTEE ON HOUSE BILL 083

Call to Order: By CHAIRMAN ARNIE A. MOHL, on April 16, 1997, at 1:00 PM, in Room 410.

ROLL CALL

Members Present:

Sen. Arnie A. Mohl (R), Chair
Rep. Ernest Bergsagel (R)
Rep. Matt McCann (D)
Rep. Steve Vick (R)
Sen. Thomas A. "Tom" Beck (R)
Sen. Eve Franklin (D)

Staff Present: Susan Fox, Legislative Council
Nan Lefebvre, Sr. Fiscal Analyst
Joanne Gunderson, Secretary

EXECUTIVE ACTION ON HB 83

Discussion:

{Tape: 1; Side: A; Approx. Time Count: 0.4-2.3; Comments: REP. BERGSAGEL gave his reasons for rejecting Senate amendments.}

Motion: REP. McCANN moved to change the responsibility for overview of the procedure that the law puts in place from the legislative auditor to the fiscal analyst's office.
{Tape: 1; Side: A; Approx. Time Count: 2.9; Comments: REP. McCANN later withdrew the motion.}

Discussion:

EXHIBITS 1 and 2
{Tape: 1; Side: A; Approx. Time Count: 3.0-6.4; Comments: Susan Fox explained the amendments which address the issue of review of the procedure and also summarized other amendments.}

Motion/Vote: SEN. BECK moved adoption of Amendments 1 through 3.
The motion carried 6 - 0.
{Tape: 1; Side: A; Approx. Time Count: 6.5}

Discussion:

{Tape: 1; Side: A; Approx. Time Count: 7.1; Comments: Susan Fox explained amendment #4.}

Motion/Vote: REP. BERGSAGEL moved adoption of Amendment 4. The motion carried 6 - 0.
{Tape: 1; Side: A; Approx. Time Count: 8.0}

Discussion:

{Tape: 1; Side: A; Approx. Time Count: 8.9-14.8; Comments: REP. VICK asked for clarification of the select committee's amendments on lines 14 - 17 on page 2 of the bill and Susan Fox explained; SENS. BECK and MOHL and REPS. BERGSAGEL and VICK continued the discussion of that concern.

Motion: SEN. BECK moved adoption of amendment 5.
{Tape: 1; Side: A; Approx. Time Count: 14.9}

Discussion:

{Tape: 1; Side: A; Approx. Time Count: 15.2-20.5; Comments: Bob Anderson, Facilities Manager, Department of Corrections responded to questions from the committee. (Note: None of the members of the audience signed in though they responded to questions from the committee.)}

Vote: The motion carried 6 - 0.
{Tape: 1; Side: A; Approx. Time Count: 21.5}

Motion/Vote: SEN. BECK moved adoption of amendment 6. The motion carried 6 - 0.
{Tape: 1; Side: A; Approx. Time Count: 21.5}

Discussion:

{Tape: 1; Side: A; Approx. Time Count: 21.7 - 25.7; Comments: Susan Fox explained amendment 7. Bob Anderson, Facilities Manager, Department of Corrections commented and explained the department's position on the amendment.}

Motion/Vote: SEN. BECK moved adoption of amendment 7. The motion carried 5 - 1; SEN. FRANKLIN voting no.
{Tape: 1; Side: A; Approx. Time Count: 25.8.}

Discussion:

{Tape: 1; Side: A; Approx. Time Count: 26.3; Comments: Susan Fox explained item 4 on Exhibit 1 which included amendments 1, 5, 8, 14, 15, 16, 17, 22, 44, 45, 47, 48, and 49. It was stated that amendment 9 was to be included in this set of amendments. Bob Anderson responded to questions.}

Motion/Vote: SEN. BECK moved adoption of the amendments listed in item 4 on Exhibit 1. The motion carried 6 - 0.

Discussion:

{Tape: 1; Side: A; Approx. Time Count: 29.1; Comments: Amendment 10 was explained.}

Motion/Vote: SEN. FRANKLIN moved adoption of amendment 10. The motion carried 6 - 0.

{Tape: 1; Side: B; Approx. Time Count: 0.1}

Discussion:

{Tape: 1; Side: B; Approx. Time Count: 0.5 - 1.7; Comments: Amendments 11, 20, 21, 39, 40, 41 (Item 6 on Exhibit 1) were explained and discussed.}

Motion: SEN. FRANKLIN moved amendments 11, 20, 21, 39, 40 and 41 be adopted. {Tape: 1; Side: B; Approx. Time Count: 1.8}

Discussion:

{Tape: 1; Side: B; Approx. Time Count: 2.0-11.4; Comments: Bob Anderson and John Metropoulos responded to questions from the committee. REP. BERGSAGEL suggested amending language to the amendment dealing with the funding cycle to match the biennium and the committee agreed to the amended language.}

Motion/Vote: SEN. FRANKLIN moved a substitute motion to adopt amendments 11, 20, 21, 39, 40, and 41 to include the amended language as proposed. The motion carried 6 - 0.

{Tape: 1; Side: B; Approx. Time Count: 11.5}

Discussion:

{Tape: 1; Side: B; Approx. Time Count: 11.7-15.9; Comments: Amendments 20 and 21 were explained by Susan Fox; then amendments 39 and 40 were discussed.}

Discussion:

{Tape: 1; Side: B; Approx. Time Count: 16.0; Comments: Amendment 41 was discussed. John Metropoulos and Bob Anderson responded to questions by the committee.}

Vote: The motion carried 6 - 0.

{Tape: 1; Side: B; Approx. Time Count: 18.3}

Discussion:

{Tape: 1; Side: B; Approx. Time Count: 18.5; Comments: Amendments 26, 27, 28 and 29 in item 7 on Exhibit 7 were discussed.}

Motion: SEN. BECK moved to adopt amendment 26.

{Tape: 1; Side: B; Approx. Time Count: 20.6}

Discussion:

{Tape: 1; Side: B; Approx. Time Count: 19.6; Comments: Susan Fox explained amendment 26. REP. MC MANN raised questions, REP. VICK and Susan Fox further discussed this amendment.}

Vote: The motion carried 5 - 1; REP. VICK voting no.

Motion: SEN. BECK moved to adopt amendments 27, 28, and 29.

{Tape: 1; Side: B; Approx. Time Count: 25.5; Comments: SEN. FRANKLIN asked that amendment 28 be segregated for the purposes of discussion.}

Discussion:

{Tape: 1; Side: B; Approx. Time Count: 25.6-Tape 2; Side A; 6.0; Comments: John Metropoulos and Bob Anderson responded to questions and addressed the concerns of the committee relating to the significant impact of these amendments.}

Vote: The motion to adopt amendments 27 and 29 carried 5 - 1; REP. McCANN voting no.

{Tape: 2; Side: A; Approx. Time Count: 6.9; Comments: Amendment 28 had been segregated.}

Motion/Vote: REP. BECK moved to adopt amendment 28. The motion carried 4 - 2; SEN. FRANKLIN and REP. McCANN voting no.

{Tape: 2; Side: A; Approx. Time Count: 7.3}

Discussion:

{Tape: 2; Side: A; Approx. Time Count: 7.7; Comments: Item 8 on Exhibit 1 was discussed.}

Motion/Vote: REP. BERGSAGEL moved the adoption of amendment 30. The motion carried 6 - 0.

{Tape: 2; Side: A; Approx. Time Count: 8.0}

Discussion:

{Tape: 2; Side: A; Approx. Time Count: 8.3; Comments: Amendment 31 was discussed.}

Motion: SEN. FRANKLIN moved to adopt amendment 31.

{Tape: 2; Side: A; Approx. Time Count: 8.4}

Discussion:

{Tape: 2; Side: A; Approx. Time Count: 8.5-10.7}

Vote: The motion carried 6 - 0.

Discussion:

{Tape: 2; Side: A; Approx. Time Count: 11.7; Comments: Item 11; amendments 32, 33, 34, 35, and 36 were explained by Susan Fox.}

Motion/Vote: SEN. BECK moved to adopt amendments 32, 33, 34, 35 and 36. The motion carried 6 - 0.

{Tape: 2; Side: A; Approx. Time Count: 12.6}

Discussion:

{Tape: 2; Side: A; Approx. Time Count: 13.1; Comments: Susan Fox explained amendment 42 (item 12 on Exhibit 1). Bob Anderson responded to questions from the committee.}

Motion/Vote: SEN. BECK moved the adoption of amendment 42. The motion carried 5 - 1; SEN. FRANKLIN voting no.

{Tape: 2; Side: A; Approx. Time Count: 17.3}

Discussion:

{Tape: 2; Side: A; Approx. Time Count: 17.7; Comments: Susan Fox explained amendment 46.}

Motion/Vote: REP. BERGSAGEL moved to adopt amendment 46. The motion carried 6 - 0.

{Tape: 2; Side: A; Approx. Time Count: 18.0}

Discussion:

{Tape: 2; Side: A; Approx. Time Count: 18.2; Comments: Susan Fox explained amendment 52.}

Motion/Vote: REP. BERGSAGEL moved to adopt amendment 52. The motion carried 6 - 0.

{Tape: 2; Side: A; Approx. Time Count: 18.8}

Discussion:

{Tape: 2; Side: A; Approx. Time Count: 19.2; Comments: Susan Fox explained the amendment on page 8, lines 26 and 27 (#37 on Exhibit 2.)}

Motion/Vote: SEN. BECK moved to adopt this amendment. The motion carried 6 - 0.

{Tape: 2; Side: A; Approx. Time Count: 20.5}

Motion/Vote: SEN. BECK moved to adopt the balance of the amendments. The motion carried 6 - 0.

{Tape: 2; Side: A; Approx. Time Count: 21.3}

Discussion:

{Tape: 2; Side: A; Approx. Time Count: 21.5; Comments: REP. VICK returned to discussion on page 7, line 1 of the bill and proposed that 10 miles be stricken and 7.5 miles be inserted.}

Motion: REP. VICK moved that on page 7, line 1, 10 miles be stricken and 7.5 miles be inserted.

{Tape: 2; Side: A; Approx. Time Count: 23.3}

Discussion:

{Tape: 2; Side: A; Approx. Time Count: 23.5; Comments: Bob Anderson responded to questions from the committee.}

Vote: The motion carried 6 - 0.

{Tape: 2; Side: A; Approx. Time Count: 24.0}

Discussion:

{Tape: 2; Side: A; Approx. Time Count: 24.3-28.2; Comments: REP. McCANN and SEN. BECK revisited the issue of location of the facilities in question with respect to proximity to schools.}

Discussion:

{Tape: 2; Side: A; Approx. Time Count: 28.3; Comments: Comments from the public were invited on the bill. John Metropoulos, Riley Johnson and Bob Anderson responded.}

Motion: REP. BERGSAGEL moved a conceptual amendment to reflect their discussion regarding conflict of interest in the review of the process.

{Tape: 2; Side: B; Approx. Time Count: 0.1}

Discussion:

{Tape: 2; Side: B; Approx. Time Count: 1.0-5.9; Comments: The committee reviewed their intent and Susan Fox clarified the language of the proposed amendment.}

Motion/Vote: SEN. BECK moved a substitute amendment 31. The motion carried 6 - 0.

{Tape: 2; Side: B; Approx. Time Count: 6.1}

Motion/Vote: SEN. BECK moved HB 83 BE CONCURRED IN AS AMENDED in the Free Conference Committee Report. The motion carried 6 - 0.

{Tape: 2; Side: B; Approx. Time Count: 6.6}

Summary of Proposed Amendments to House Bill No. 83
(HBO08304.asf)
for the Free Conference Committee

- (1) Amendment #4 clarifies that private correctional facilities include privately operated or privately owned and operated regional correctional facilities.
- (2) Amendment #5 requires the department to adopt administrative rules on minimum applicable standards and accreditation.
- (3) Amendment #7 addresses the concern that if a private correctional facility has to conform with the state's long-range correctional needs, objectives, and goals of the department in order to be licensed, that the department must make them known.
- (4) Amendments #1, 5, 8, 14, 15, 16, 17, 22, 44, 45, 47, 48, 49 clarify the applicable standards to which a private correctional facility must conform and become accredited, i.e. American correctional association and national commission on correctional health care standards. Amendment #18 clarifies that accreditation is not necessary for licensure during the first three years of the contract. The private correctional facility is required to conform to the applicable standards during that period of time.
- (5) Amendment #10 places in statute what was previously implied, that the department must publish a request for proposals before contracting for services. A statement regarding the department and the states' long-range correctional needs, objectives, and goals must be included.
- (6) Amendments #11, 20, 21, 39, 40, 41 clarifies language and the respective responsibilities regarding performance bonds, indemnification insurance, and legal costs. Amendments #37, 38 clean-up language on contractor costs responsibility.
- (7) Amendments #26, 27, 28, 29 address concerns regarding siting. The amendments reduce by half the distance allowed to site near schools, etc. to 1 mile and the distance to adjacent counties to 5 miles. These amendments also do not allow an adjacent county to veto the siting, but assures that their concerns will be considered.
- (8) Amendment #30 strikes the section on construction requirements as they have been amended elsewhere in the bill.
 - > subsection (1) is in page 5, lines 22 - 24
 - > subsection (2) is in amendment #22
 - > subsection (3) is in page 2, lines 23 -24 and covered under administrative rule.

(9) Amendment #31 places legislative audit review of the process by which the request for proposals was published and a contract review. This is considerably narrower language than the provisions that had been amended into and subsequently deleted from the bill and addresses the audit independence concerns.

(11) Amendments #32, 33, 34, 35, 36 clarify the provisions that are precluded in the contract and specifically changes the classification instrument to one that must be approved by the department, instead of identical to the one used by the department.

(12) Amendment #42 deletes section 11 on qualifications of correctional officers. Subsection (1) is covered by ACA standards. Subsection (2) is covered by departmental policy.

(13) Amendment #46 cleans up references to clarify to whom the department must give notice in case of nonconformance.

(14) Amendment #52 strikes language exempting proposed facilities from siting requirements.

The remainder of the amendments are for internal reference changes caused by other amendments and editorial clean-up to make language standard and are not substantive in nature.

Amendments to House Bill No. 83
Reference Bill As Amended

Requested by Representative Bergsagel
For the Conference Committee on HB 83

Prepared by Susan Byorth Fox
April 15, 1997

1. Page 1, line 20.
Following: "standards"
Insert: "and national commission on correctional health care standards"
2. Page 1, line 29.
Strike: "13"
Strike: "11"
3. Page 2, line 3.
Following: "FACILITY"
Insert: ", "
4. Page 2, line 4.
Following: "53-30-503"
Insert: ", if privately operated or privately owned and operated"
5. Page 2, lines 20 through 22.
Following: "ADOPT" on line 20
Insert: "administrative"
Following: "RULES" on line 20
Strike: the remainder of line 20 through "OPERATION." on line 22
Insert: "that include the minimum applicable standards for the siting, construction, operation, and physical condition of a private correctional facility and for the security, safety, health, treatment, and discipline of persons confined in a private correctional facility."
(b) The administrative rules must require that a private correctional facility conform to applicable American correctional association and national commission on correctional health care standards for the facility and achieve accreditation from the American correctional association and national commission on correctional health care within 3 years from the date the facility begins operation."
Renummer: subsequent subsection
6. Page 2, line 23.
Following: "THE"
Insert: "administrative"
7. Page 2.
Following: line 24
Insert: "(2) Within 90 days of [the effective date of this act] and on a biennial basis, the department shall publish a description of the long-range correctional needs, objectives, and goals of the department and the state."

Renumber: subsequent subsections

8. Page 2, line 26.

Strike: "13"

Insert: "11"

Strike: "REGULATIONS."

Insert: "applicable American correctional association and
national commission on correctional health care standards,
department rules, and"

9. Page 2, line 27.

Following: "REQUIREMENTS"

Strike: remainder of line 27 through "RULES"

10. Page 3, line 1.

Following: "(1)"

Insert: "Prior to contracting for services with a private
correctional facility, the department shall publish a
request for proposals. The request for proposals must
include a description of the long-range correctional needs,
objectives, and goals of the department and the state.
(2)"

Renumber: subsequent subsections

11. Page 4, line 11.

Following: "(J)"

Insert: "a"

Strike: "BONDS"

Insert: "bond that is sufficient to protect the state from
damages upon default or nonperformance and that may not
exceed the annual amount of the compensation to be paid to
the contractor"

12. Page 4, line 28.

Strike: "13"

Insert: "11"

13. Page 5, line 5.

Strike: "13"

Insert: "11"

14. Page 5.

Following: line 5

Insert: "applicable"

15. Page 5, line 6.

Strike: "GUIDELINES"

Insert: "and national commission on correctional health care
standards as determined by the department by administrative
rule"

16. Page 5, line 11.

Following: "STATUTES."

Insert: "applicable"

17. Page 5, line 12.

Strike: "GUIDELINES"

Insert: "and national commission on correctional health care standards as determined by the department by administrative rule"

18. Page 5, line 13.

Following: "RULE."

Insert: "During the initial 3-year period of a contract, a private correctional facility is not required to be accredited by the American correctional association or the national commission on correctional health care in order to be granted a license by the department."

19. Page 5, line 19.

Strike: "grant"

Insert: "facility"

Following: "correctional"

Insert: "needs, objectives, and"

20. Page 5, line 22.

Following: "until the"

Insert: "owner or operator of the"

21. Page 5, line 23.

Strike: "an indemnity bond"

Insert: "proof of indemnity insurance"

Following: the first "that"

Insert: "appropriately"

22. Page 5, lines 26 and 27.

Strike: "PROVIDES" on line 26 through "LOCATED"

Insert: "is constructed in accordance with American correctional association facility construction requirements. In addition, the private correctional facility shall comply with any other applicable local, state, or federal laws or regulations"

23. Page 6, line 3.

Strike: "MUST"

Insert: "shall"

24. Page 6, line 5.

Following: "ESCAPE."

Insert: "riot or disturbance,"

Strike: "disaster, riot"

Insert: "event"

25. Page 6, line 15.

Strike: "13"

Insert: "11"

26. Page 6, line 19.

Strike: "2 MILES"

Insert: "1 mile"

27. Page 7, line 1.

Strike: "10"

Insert: "5"

28. Page 7, line 3.

Following: "HAVE"

Strike: "AN"

Insert: "a significant"

29. Page 7, lines 5 through 7.

Following: "UNLESS THE"

Strike: the remainder of line 5 through "VOTE" on line 7

Insert: "concerns of the adjacent county have been considered"

30. Page 7, lines 9 through 19.

Strike: section 8 in its entirety

Renumber: subsequent sections

31. Page 7, line 21.

Following: "WITH"

Insert: "owners or operators of"

Following: "FACILITIES."

Insert: "(1) Upon request of the legislative audit committee, the legislative audit division shall review the procedures by which a request for proposals was published and shall review each contract prior to execution to determine if the contract includes the requirements provided in [sections 1 through 11]."

Renumber: subsequent subsections

32. Page 7, line 22.

Following: "WITH"

Insert: "an owner or operator of"

33. Page 7, lines 26 and 27.

Following: "CONTRACTOR."

Strike: the remainder of line 26 through "DEPARTMENT TO" on line 27

Insert: "The contract must provide that a private contractor may not"

34. Page 7, line 30.

Following: "PRIVATE"

Insert: "correctional"

35. Page 8, line 13.

Strike: "DEVELOP OR"

36. Page 8, lines 14 and 15.

Strike: "BASED" on line 14 through "SYSTEM" on line 15

Insert: "unless it is approved by the department"

37. Page 8, lines 26 and 27.

Strike: subsection (1) in its entirety

Renumber: subsequent subsections

38. Page 8, line 29.

Following: "SUBDIVISION"

Insert: "of the state"

39. Page 8, line 30.

Following: "FACILITY"

Insert: "because of the contractor's negligence, errors,
omissions, intentional acts, or failure to comply with the
terms of the contract"

40. Page 9, line 2.

Following: "SUBDIVISION"

Insert: "of the state for defense of causes of action"

Following: "INMATE"

Insert: "that accrue"

41. Page 9.

Following: line 3

Insert: " (3) The provisions of [sections 1 through 11] are not
intended to create a private or public cause of action for
any person, partnership, corporation, or other entity,
including any inmate housed within any private correctional
facility or any inmate housed within the state of Montana."

42. Page 9, line 5 through line 11.

Strike: section 11 in its entirety

Renumber: subsequent sections

43. Page 9, line 22.

Strike: "13"

Insert: "11"

44. Page 9, line 23.

Following: "ESTABLISHED"

Insert: "applicable"

Strike: "GUIDELINES"

Insert: "and national commission on correctional health care
standards as determined by the department by administrative
rule"

45. Page 9, line 26.

Strike: "13] and"

Insert: "11], applicable American correctional association and
national commission on correctional health care standards,"

Following: "rules,"

Insert: "and contract requirements,"

46. Page 9, line 27.

Strike: "governing board of the"

Insert: "owner or operator, or both, of the private correctional"

47. Page 10, line 1.

Strike: "13] and"

Insert: "11], applicable American correctional association and
national commission on correctional health care standards,"

Following: "rules,"
Insert: "and contract requirements,"

48. Page 10, line 3.

Strike: "13"

Insert: "11], applicable American correctional association and
national commission on correctional health care standards,"

49. Page 10, line 12.

Strike: "13"

Insert: "11], applicable American correctional association and
national commission on correctional health care standards,"

50. Page 10, line 13.

Strike: "RULE"

Insert: "rules"

51. Page 10, line 23.

Strike: "13"

Insert: "11"

52. Page 10, line 29.

Strike: "OR PROPOSED"



FREE CONFERENCE COMMITTEE

on House Bill 83

Report No. 1, April 16, 1997

Page 1 of 8

Mr. Speaker and Mr. President:

We, your Conference Committee met and considered **House Bill 83** (reference copy -- salmon) and recommend that **House Bill 83** be amended as follows:

1. Page 1, line 20.

Following: "the second "standards"

Insert: "and national commission on correctional health care standards"

2. Page 1, line 29.

Strike: "13"

Strike: "11"

3. Page 2, line 3.

Following: "FACILITY"

Insert: ", "

4. Page 2, line 4.

Following: "53-30-503"

Insert: ", if privately operated or privately owned and operated"

5. Page 2, lines 20 through 22.

Following: "ADOPT" on line 20

Insert: "administrative"

Following: "RULES" on line 20

Strike: the remainder of line 20 through "OPERATION." on line 22

Insert: "that include the minimum applicable standards for the siting, construction, operation, and physical condition of a private correctional facility and for the security, safety, health, treatment, and discipline of persons confined in a private correctional facility.

(b) The administrative rules must require that a private correctional facility conform to applicable American correctional association and national commission on correctional health care standards for the facility and achieve accreditation from the American correctional association and national commission on

ADOPT

AC HB 83-1

REJECT

811654CC.Hgd

correctional health care within 3 years from the date the facility begins operation."

Renumber: subsequent subsection

6. Page 2, line 23.

Following: "THE"

Insert: "administrative"

7. Page 2.

Following: line 24

Insert: "(2) Within 90 days of [the effective date of this act] and on a biennial basis, the department shall publish a description of the long-range correctional needs, objectives, and goals of the department and the state."

Renumber: subsequent subsections

8. Page 2, line 26.

Strike: "13"

Insert: "11"

Strike: "REGULATIONS."

Insert: "applicable American correctional association and national commission on correctional health care standards, department rules, and"

9. Page 2, line 27.

Following: "REQUIREMENTS"

Strike: remainder of line 27 through "RULES"

10. Page 3, line 1.

Following: "(1)"

Insert: "Prior to contracting for services with a private correctional facility, the department shall publish a request for proposals. The request for proposals must include a description of the long-range correctional needs, objectives, and goals of the department and the state. (2)"

Renumber: subsequent subsections

11. Page 3, line 4.

Strike: "i"

Insert: ", including:"

12. Page 3, line 15.

Following: "(V)"

Insert: "for"

13. Page 4, line 2.

Following: "i"

Insert: "and"

14. Page 4, line 11.

Following: "(J)"

Insert: "a"

Strike: "BONDS"

Insert: "bond that is sufficient to protect the state from
damages upon default or nonperformance and that may not
exceed the biennial amount of the compensation to be paid to
the contractor"

15. Page 4, line 28.

Strike: "13"

Insert: "11"

16. Page 5, line 5.

Strike: "13"

Insert: "11"

17. Page 5.

Following: line 5

Insert: "applicable"

18. Page 5, line 6.

Strike: "GUIDELINES"

Insert: "and national commission on correctional health care
standards as determined by the department by administrative
rule"

19. Page 5, line 11.

Following: "STATUTES."

Insert: "applicable"

20. Page 5, line 12.

Strike: "GUIDELINES"

Insert: "and national commission on correctional health care
standards as determined by the department by administrative
rule"

21. Page 5, line 13.

Following: "RULE."

Insert: "During the initial 3-year period of a contract, a
private correctional facility is not required to be
accredited by the American correctional association or the
national commission on correctional health care in order to
be granted a license by the department."

22. Page 5, line 19.

Strike: "grant"

Insert: "facility"

Following: "correctional"

Insert: "needs, objectives, and"

23. Page 5, line 22.

Following: "until the"

Insert: "owner or operator of the"

24. Page 5, line 23.

Strike: "an indemnity bond"

Insert: "proof of indemnity insurance"

Following: the first "that"

Insert: "appropriately"

25. Page 5, lines 26 and 27.

Strike: "PROVIDES" on line 26 through "LOCATED"

Insert: "is constructed in accordance with American correctional association facility construction requirements. In addition, the private correctional facility shall comply with any other applicable local, state, or federal laws or regulations"

26. Page 6, line 3.

Strike: "MUST"

Insert: "shall"

27. Page 6, line 5.

Following: "ESCAPE,"

Insert: "riot or disturbance,"

Strike: "disaster, riot"

Insert: "event"

28. Page 6, line 15.

Strike: "13"

Insert: "11"

29. Page 6, line 19.

Strike: "2 MILES"

Insert: "1 mile"

30. Page 7, line 1.

Strike: "10"

Insert: "7 1/2"

31. Page 7, line 3.

Following: "HAVE"

Strike: "AN"

Insert: "a significant"

32. Page 7, lines 5 through 7.

Following: "UNLESS THE"

Strike: the remainder of line 5 through "VOTE" on line 7

Insert: "concerns of the adjacent county have been considered"

33. Page 7, lines 9 through 19.

Strike: section 8 in its entirety

Re-number: subsequent sections

34. Page 7, line 21.

Following: "WITH"

Insert: "owners or operators of"

Following: "FACILITIES."

Insert: "(1) Upon request of the legislative audit committee,
the legislative audit division shall review the procedures
by which a contract was awarded and shall review each
contract prior to execution to determine if the contract
includes the requirements provided in [sections 1 through
11]."

Re-number: subsequent subsections

35. Page 7, line 22.

Following: "WITH"

Insert: "an owner or operator of"

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Following: "CONTRACTOR."

Strike: the remainder of line 26 through "DEPARTMENT TO" on line
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Strike: subsection (1) in its entirety
Renumber: subsequent subsections

41. Page 8, line 29.
Following: "SUBDIVISION"
Insert: "of the state"

42. Page 8, line 30.
Following: "FACILITY"
Insert: "because of the contractor's negligence, errors,
omissions, intentional acts, or failure to comply with the
terms of the contract"

43. Page 9, line 2.
Following: "SUBDIVISION"
Insert: "of the state for defense of causes of action"
Following: "INMATE"
Insert: "that accrue"

44. Page 9.
Following: line 3
Insert: " (3) The provisions of [sections 1 through 11] are not
intended to create a private or public cause of action for
any person, partnership, corporation, or other entity,
including any inmate housed within any private correctional
facility or any inmate housed within the state of Montana."

45. Page 9, line 5 through line 11.
Strike: section 11 in its entirety
Renumber: subsequent sections

46. Page 9, line 22.
Strike: "13"
Insert: "11"

47. Page 9, line 23.
Following: "ESTABLISHED"
Insert: "applicable"
Strike: "GUIDELINES"
Insert: "and national commission on correctional health care
standards as determined by the department by administrative
rule"

48. Page 9, line 26.
Strike: "13] and"
Insert: "11], applicable American correctional association and
national commission on correctional health care standards,"

Following: "rules,"
Insert: "and contract requirements,"

49. Page 9, line 27.
Strike: "governing board of the"
Insert: "owner or operator, or both, of the private correctional"

50. Page 10, line 1.
Strike: "13] and"
Insert: "11], applicable American correctional association and
national commission on correctional health care standards,"
Following: "rules,"
Insert: "and contract requirements,"

51. Page 10, line 3.
Strike: "13]"
Insert: "11], applicable American correctional association and
national commission on correctional health care standards"

52. Page 10, line 12.
Strike: "13]"
Insert: "11], applicable American correctional association and
national commission on correctional health care standards"

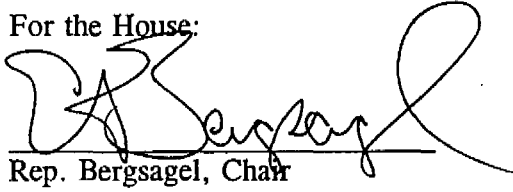
53. Page 10, line 13.
Strike: "RULE"
Insert: "rules"

54. Page 10, line 23.
Strike: "13"
Insert: "11"

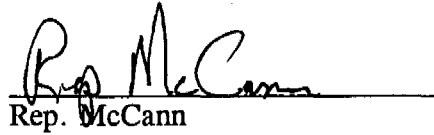
55. Page 10, line 29.
Strike: "OR PROPOSED"

And this Conference Committee report be adopted.

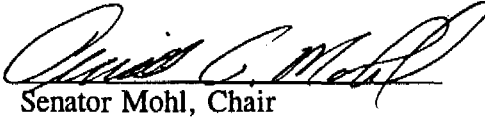
For the House:

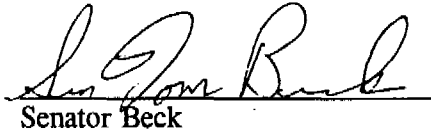

Rep. Bergsagel, Chair

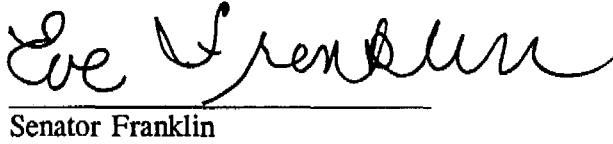

Rep. Vick


Rep. McCann

For the Senate:


Senator Mohl, Chair


Senator Beck


Senator Franklin



SENATE COMMITTEE OF THE WHOLE AMENDMENT

House Bill 83

Senator Beck

March 27, 1997 1:14 pm

Mr. Chairman: I move to amend House Bill 83 (second house second reading copy -- tan).

ADOPT

voice

REJECT

Signed: *Sen Tom Beck*

Senator Tom Beck

That such amendments read:

1. Page 2, line 3.

Following: "."

Insert: "The term includes a regional correctional facility as defined in 53-30-503."

2. Page 2, line 4.

Following: "center"

Insert: "or a regional jail"

3. Page 2, line 12.

Following: the second "IN"

Insert: "the portion of"

4. Page 2, line 13.

Following: "STATE"

Insert: "that is used for the incarceration of convicted felons for a term of over 1 year"

-END-

IS Amd. Coord.

HB 83

SENATE

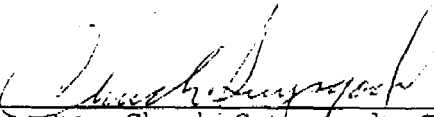


SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 21, 1997

MR. PRESIDENT:

We, your committee on Finance and Claims having had under consideration House Bill 83 (third reading copy -- blue), respectfully report that House Bill 83 be amended as follows and as so amended be concurred in.

Signed: 
Senator Chuck Swysgood, Chair

That such amendments read:

1. Page 5, lines 11 through 15.
Strike: "UPON" on line 11 through "DEPARTMENT." on line 15
2. Page 5, lines 17 and 18.
Following: "state."
Strike: "THE" on line 17 through "DETERMINATION." on line 18

-END-

HB 83


SA Amd. Coord.
Sec. of Senate


Senator Carrying Bill

SENATE
621320SC.STS



The Big Sky Country

Joanne ?
4/16 1pm
410

MONTANA HOUSE OF REPRESENTATIVES

April 12, 1997

The Honorable Gary Aklestad
President of the Senate
State Capitol
Helena, MT 59620

Mr. President:

I am directed by the House of Representatives to inform the Senate that the House, on April 12, 1997, failed to concur with the Senate amendments to House Bill 83, and by motion, the Speaker was authorized to appoint a Free Conference Committee.

The Speaker appointed the following members:

Representative Bergsagel, Chairman
Representative Vick
Representative McCann

The House requests that the Senate appoint a like committee to confer on House Bill No. 83.

Sincerely,

Marilyn Miller
MARILYN MILLER
Chief Clerk

tnsa

Joanne Anderson
10:15

Clayton
Doyle



MONTANA STATE SENATE

April 14, 1997

The Honorable John Mercer
Speaker of the House
State Capitol
Helena, MT 59620

Mr. Speaker:

I am directed by the Senate to inform the House of Representatives that the Senate on this day, April 14, 1997, acceded to the request of the House and authorized the President to appoint a Free Conference Committee to meet with a like committee of the House on House Bill No. 83.

The President appointed the following members:

Senator Arnie Mohl, Chair
Senator Tom Beck
Senator Eve Franklin

Respectfully,

A handwritten signature in cursive script that reads "Rosana Skelton".

ROSANA SKELTON
Secretary of the Senate

RS/jf



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

April 18, 1997

The Honorable Gary Aklestad
President of the Senate
State Capitol
Helena, MT 59620

Mr. President:

I am directed by the House of Representatives to inform the Senate that Free Conference Committee Report No. 1 on Senate Amendments to House Bill 83, "ALLOW AND REGULATE PRIVATE CORRECTIONAL FACILITIES", was adopted on April 18, 1997, on Third reading by the House.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marilyn Miller".

MARILYN MILLER
Chief Clerk

tccado

MONTANA HOUSE OF REPRESENTATIVES
55TH LEGISLATURE
1997 REGULAR SESSION
VOTE TABULATION

DATE: MARCH 15, 1997
TIME: 3:20 PM

SEQ. NO: 44.0
BILL NO: HB 83
BILL SP:

YES	NO	EXC	ABS
76	22	2	0

ORDER OF BUSINESS 8 3RD READING
3RD READING D/PASS

Y	ADAMS	Y	HANSON, HS	Y	PROUSE
Y	AHNER	Y	HANSON, M	Y	QUILICI
Y	ANDERSON	Y	HARPER	N	RANEY
Y	ARNOTT	N	HARRINGTON	N	REAM
Y	BANKHEAD	Y	HAYNE	Y	REHBEIN
Y	BARNETT	N	HEAVY RUNNER	Y	ROSE
Y	BARNHART	Y	HIBBARD	Y	RYAN
Y	BEAUDRY	Y	HOLLAND	N	SANDS
Y	BERGMAN	N	HURDLE	Y	SCHMIDT
Y	BERGSAGEL	Y	JOHNSON, J	Y	SIMON
Y	BITNEY	Y	JOHNSON, R	Y	SIMPKINS
Y	BOHARSKI	Y	JORE	N	SIMPSON
Y	BOHLINGER	Y	KASTEN	Y	SLITER
Y	BOOKOUT	Y	KEENAN	Y	SMITH
N	BRAINARD	Y	KITZENBERG	Y	SOFT
N	CAREY	Y	KNOX	N	SQUIRES
E	CLARK	N	KOTTEL	Y	STORY
Y	COBB	Y	KRENZLER	Y	STOVALL
N	COCCHIARELLA	Y	LAWSON	Y	SWANSON
Y	CURTISS	Y	MARSHALL	Y	TASH
Y	DeBRUYCKER	Y	MASOLO	Y	TAYLOR
Y	DENNY	Y	McCANN	Y	TREXLER
Y	DEVANEY	N	McCULLOCH	N	TROPILA
N	DOWELL	Y	McGEE	N	TUSS
N	ELLINGSON	Y	MENAHAN	Y	VICK
E	ELLIS	Y	MILLS	Y	WAGNER
N	EWER	Y	MOLNAR	Y	WALTERS
Y	FELAND	Y	MOOD	Y	WELLS
N	GALVIN	Y	OHS	N	WHITEHEAD
Y	GILLAN	N	ORR	Y	WISEMAN
Y	GRADY	Y	PAVLOVICH	N	WYATT
Y	GRIMES	Y	PEASE	Y	ZOOK
Y	GRINDE	Y	PECK	Y	MR. SPEAKER
Y	HAGENER				

VOTED ABSENTEE: KITZENBERG, McCANN, PEASE, PROUSE, RYAN, YES;
BRAINARD, NO.

SEQ NO. 956
REVISION 0

APR 2 1997
4:45 PM

MONTANA SENATE
55th LEGISLATURE
1997 REGULAR SESSION

HB 83
BERGSAGEL
THIRD READING
BE CONCURRED IN

PRESIDING: AKLESTAD

43 YEAS 6 NAYS 0 NOT VOTING 1 EXCUSED 0 PAIRED

N	BAER	Y	HERTEL
N	BARTLETT	Y	HOLDEN
Y	BECK	Y	JABS
Y	BENEDICT	Y	JENKINS
Y	BISHOP	N	JERGESON
E	BROOKE	Y	KEATING
Y	BURNETT	Y	LYNCH
Y	CHRISTIAENS	Y	MAHLUM
Y	COLE	Y	MCCARTHY
Y	CRIPPEN	Y	MCNUTT
Y	CRISMORE	Y	MESAROS
Y	DEPRATU	Y	MILLER
Y	DEVLIN	Y	MOHL
Y	DOHERTY	Y	NELSON
Y	ECK	Y	SHEA
Y	EMERSON	Y	SPRAGUE
Y	ESTRADA	Y	STANG
Y	FOSTER	Y	SWYSGOOD
N	FRANKLIN	Y	TAYLOR
Y	GAGE	Y	THOMAS
Y	GLASER	Y	TOEWS
Y	GROSFIELD	Y	VANVALKENBURG
Y	HALLIGAN	N	WATERMAN
Y	HARGROVE	Y	WILSON
Y	HARP	N	AKLESTAD

Y=YEA N=NAY E=EXCUSED -=ABENT OR NOT VOTING
YP=PAIRED YEA NP=PAIRED NAY Y*=CENTRAL YEA N*=CENTRAL NAY

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0083, as introducedDESCRIPTION OF PROPOSED LEGISLATION:

An act allowing and providing for the regulation of private correctional facilities; and providing an immediate effective date.

ASSUMPTIONS:

1. One 500 bed private correctional facility will be operating in Montana beginning in fiscal year 1999.
2. Department of Corrections (DOC), Professional Services Division personnel will be required to adopt/develop the standards and administrative rules in compliance with this bill pursuant to section 4(2). This personnel would also make licensing determinations based on these standards; initially every 6 months; after a record of compliance, annually. It is estimated that this would require 1.00 FTE Security Specialist/Inspector (grade 15) and 1.00 Administrative Support (grade 8). The grade 15 position would be located at the facility.
3. Operating expenses are \$3,900 per FTE plus \$3,962 for computer equipment for each FTE in fiscal year 1998.
4. The cost of licensing/regulation for the grade 15 position would be paid by the contractor and is reflected in general fund revenue in the table below.
5. The Department of Administration (DOA) will have minimal involvement in the adoption of standards and will not be involved in annual inspections. The department will be involved in the approval of the design and construction of the private facilities but the fiscal impact is estimated to be minimal.
6. The new correctional facility will employ about 125.00 FTE at an average salary of \$23,500 per year. The 5% average state income tax rate for these employees will generate about \$147,000 general fund each year.

FISCAL IMPACT:Expenditures:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
FTE	2.00	2.00
Personal Services	54,933	54,933
Operating Expenses	7,800	7,800
Equipment	<u>7,924</u>	<u>0</u>
Total	70,657	62,733

Funding:

General Fund (01)	70,657	62,733
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Revenues:

General Fund (01)	\$0	\$42,302
Payroll Income Taxes (01)	0	147,000

<u>Net Fiscal Impact:</u> (01)	(70,657)	\$ 126,569
--------------------------------	----------	------------

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

There would be an undetermined impact to the tax base and economy of a county and/or city where the private correctional facility was located.

TECHNICAL NOTES:

1. The bill requires the DOC to act in a regulatory capacity over the private facilities that they are also contracting with. The DOA would be assuming a regulatory function by approving the design and construction of the private facilities.
2. General powers and duties of DOA, 18-2-105, MCA, may need to be revised to include the duties and responsibilities created in this bill.

Dave Lewis 1-8-97

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

ERNEST BERGSAGEL, PRIMARY SPONSOR DATE

Fiscal Note for HB0083, as introduced

HB 83

DATE 4/16/97

SENATE COMMITTEE ON Free Conference Committee

BILLS BEING HEARD TODAY: HB 83

< ■ >

PLEASE PRINT

< ■ >

Check One

Name	Representing	Bill No.	Support	Oppose

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY